

Schedule 1 Respondents' views

Introduction

Background

- 1.1 Following National Grid Transco plc's (NGT's) announcement, in May 2003, that it would consider the sale of one or more of its DNs if it were to increase shareholder value, Ofgem initiated a programme of work to explore the potential costs and benefits that such a transaction may have for customers.
- 1.2 As part of this process, in September 2004, Ofgem issued its initial analysis of the modifications to the six relevant GT licences (in terms of both content and structure) that would be required to ensure that the regulatory framework protects the interests of customers within a divested industry structure¹.
- 1.3 This was followed, in November 2004, by a "Next Steps" document², which set out respondents' views to Ofgem's September document, and Ofgem's revised proposals in the light of these views.
- 1.4 Finally, in February 2005, Ofgem issued a formal licence modification and transfer consultation which was published on 14 February 2005 (the February document)³ under section 23 and section 8AA of the Gas Act 1986 (Gas Act) on the proposed changes to Transco's licences required to ensure that the interests of customers continue to be protected in the event of any DN sales. This formal licence consultation represented the culmination of an extensive process of consultation, not only through the consideration of responses to the consultation documents outlined above, but also through discussions at regular "open-door" meetings of the Development and Implementation Steering Group (DISG).
- 1.5 Following publication of this Direction, and prior to the completion of the sale of shares in the DNs which Transco is proposing to sell to third party potential

¹ 215/04 – National Grid Transco – potential sale of gas distribution network businesses - Initial thoughts on restructuring of Transco plc's Gas Transporters licence. Consultation document - September 2004.

² 263/04 - National Grid Transco – potential sale of gas distribution network businesses - Licensing: Next Steps – Formal consultation under section 23 and informal consultation under section 8AA of the Gas Act. November 2004.

³ 45/05 - National Grid Transco – potential sale of gas distribution network businesses - Formal consultation under section 23 and section 8AA of the Gas Act 1986, February 2005.

purchasers (potential purchasers), Ofgem will conduct a further consultation on modifications to each of the six relevant GT licences. This section 23 licence consultation (referred to in this document as the April section 23 consultation) is expected to include modifications to introduce the interim incentive schemes for NTS and DN-GTs, as well as certain changes required as a consequence of respondents' views to the February document.

Purpose of this Schedule

- 1.6 In this Schedule, we summarise, for each licence condition for which detailed comments were submitted as part of responses:
- ◆ some of the high-level views expressed by these respondents; and
 - ◆ Ofgem's proposals in the light of these responses.
- 1.7 In total Ofgem received seventeen responses to the February document. Respondents included Transco (the licensee), all three potential purchasers, shippers/suppliers, the Association of Electricity Producers and the Health and Safety Executive (HSE). None of these responses were confidential.
- 1.8 In addition, one respondent (Gemserve) provided comments on the drafting of Standard Special Condition A11 (Network Code and Uniform Network Code) and Standard Special Condition A12 (Joint Office Governance Arrangements) as part of their response to the consultation on network code arrangements – stages 1 and 2⁴.
- 1.9 Each of these responses (with the exception of one)⁵ can be found in full on the Ofgem web-site (www.ofgem.gov.uk).
- 1.10 Given that Ofgem will be issuing a further consultation on licence consultations shortly after this Direction, to introduce (amongst other things) the interim incentive schemes for NTS and DN-GTs, this Schedule provides Ofgem with an opportunity to reflect some of the views raised by respondents in response to the February document.

⁴ 73/05 - Ofgem Open Letter Gas Distribution Network Sales - Consultation on Network Code Arrangements, 4 March 2005.

⁵ One respondent stated that their response was not confidential, but asked that it should not be posted on Ofgem's web-site.

1.11 Following consideration of responses to the February document, and having regard to its powers under section 8AA and section 23 of the Gas Act 1986, the Gas and Electricity Markets Authority (Authority) has decided that not all of the issues, in Ofgem's view, require reconsultation. Instead, the Authority proposes:

- ◆ to correct minor typographical or cross-referencing errors which have arisen as part of the changes proposed by DN sales, as part of the accompanying direction (as set out in Schedule 2 and reflected in the licence drafting in Schedule 3); and
- ◆ to make certain further changes to the proposed licence drafting in response to comments made by respondents in the April section 23 consultation document which is scheduled for publication on 26 April 2005.

1.12 The proposed April section 23 consultation will provide Ofgem with additional time to consider the licence drafting appropriate to address respondents' concerns, where changes are felt to be necessary. Furthermore, inclusion of these changes within the April section 23 consultation will also allow respondents further time to consider these changes and provide further comment or review. Ofgem would note that, subject to the consideration of respondents' views, the changes to be proposed within the April section 23 consultation are expected to come into effect on or before the completion of the sale of shares of the four relevant wholly owned Transco subsidiary companies to third party purchasers and therefore be effective within the licences before the purchasers acquire the shares.

1.13 In Ofgem's view, subject to the section 8AA and section 23 changes highlighted within this Direction, the licence drafting largely delivers the policy intent as outlined in the 14 February formal licence consultation. Furthermore, NGT has provided a legally enforceable undertaking that they will act as if the changes to be proposed as part of the April section 23 had been implemented upon hive-down, unless otherwise agreed with Ofgem.

Related consultations

1.14 On 20 January 2005, the Authority granted its consent to Transco's proposed disposal of four of its DNs, subject to the satisfaction of a number of conditions⁶. As part of the process of assessing whether the conditions to consent have been satisfied, the Authority has been required to make a number of inter-related decisions, specifically in relation to the proposed Uniform Network Code (UNC) and the licence. The following consultations, which have recently closed, are relevant to these decisions:

- ◆ the consultation on network code arrangements, which gave interested parties the opportunity to comment on the detailed industry code proposals to support a multi-transporter industry structure, including the UNC which has been developed by Transco in consultation with interested parties including potential purchasers and shippers;⁷
- ◆ the consultation on Transco's Modification Proposal 0745, which proposes to modify Transco's existing Network Code into an individual ('short form') network code that incorporates by reference the UNC;⁸ and
- ◆ the February document.

1.15 The responses to these consultations were used to inform the Authority's assessment as to whether the conditions precedent necessary for hive-down to occur have been satisfied.

1.16 It is in this context that the Authority has decided to issue this Direction.

⁶ National Grid Transco – Sale of gas distribution networks: Authority decision – Transco plc applications to dispose of four gas distribution networks, Decision document Ofgem, February 2005 21/05

⁷ 73/05 – Ofgem Open Letter Gas Distribution Network Sales –consultation on Network Code Arrangements, 4 March 2005 and 99/05 – Ofgem Open Letter Gas Distribution Network Sales - Stage 2 of consultation on the Network Code Arrangements, 29 March 2005.

⁸ Transco submitted Urgent Modification Proposal 0745 to Ofgem on 23 February 2005. Ofgem granted urgency status on 25 February 2005. Urgent Modification Proposal 0745 is currently being progressed in accordance with Transco's Network Code modification rules, using a parallel but separate process to this consultation process.

General comments

Respondents' views

NGT

- 1.17 In their response, NGT stated that a few issues remained to be resolved, and that, subject to the satisfactory resolution of these issues, NGT considered that it would be able to consent to the modifications proposed. In its response, NGT acknowledged the enormous amount of progress that had been made to develop the licence to its current stage. Transco has subsequently provided its consent to the proposed modifications.

Potential Purchasers

- 1.18 All potential purchasers recognised in their responses the inclusive approach that Ofgem adopted to develop the licences that will apply to NTS and DN-GTs if DN sales proceed. The potential purchasers also acknowledged the numerous opportunities that Ofgem had provided over the recent months to comment upon the proposed licence drafting.
- 1.19 One potential purchaser noted that there remained a number of areas where Ofgem's policy decisions did not reflect their views, including:
- ◆ the metering obligations of last resort;
 - ◆ the lack of geographic limitation on the obligation to offer terms for competitive metering and meter reading services;
 - ◆ the obligations in respect of the DN's procurement and use of system management services that (in its view, inappropriately) replicate the NTS requirements;
 - ◆ the introduction of new standards of performance on connections for the IDNs; and
 - ◆ the reform of DN interruption arrangements.

- 1.20 This potential purchaser urged Ofgem to consider the possibility of reviewing these policy issues at the earliest opportunity, following completion of the sales process.
- 1.21 Another potential purchaser highlighted two broad areas where they had previously raised concerns:
- ◆ conditions in the licence that are being applied at the DN level where previously they have been focused at the NTS level (for example, system development and system management); and
 - ◆ the suite of obligations in relation to metering.
- 1.22 This potential purchaser stated that they now accepted and recognised Ofgem's objectives in relation to these conditions, but that they felt that both areas would merit early review post sale of their application in light of operating experience in the multi-transporter environment.
- 1.23 The other potential purchaser did not highlight broad areas of concern but commented on:
- ◆ credit rating of licensee; and
 - ◆ prohibited procurement activities.

Shippers/suppliers

- 1.24 One shipper/supplier stated that they had not attempted to review all licence changes, preferring instead to focus on those aspects of the proposals that offer safeguards against inefficient fragmentation of existing market rules, charging arrangements processes and systems. This shipper/supplier stated that they had also commented on other matters that could, in their view, materially affect customers such as licence conditions related to the proposed enduring offtake arrangements. They noted that a number of detailed points were made in their response to license consultations published at the end of 2004, and therefore, rather than restate many of these points, they had made comments only where they considered significant revisions to the drafting or policy choices were required.

- 1.25 The same shipper/supplier stated that, in general, they considered the package of licence changes proposed would provide a coherent and viable regulatory framework for gas transportation following the sale of gas distribution networks. This shipper/supplier noted that the Ofgem staff involved in this work should be commended for their persistence in pulling together many complex diverse issues, balancing competing demands of the various stakeholders and facilitating consultation wherever possible. This respondent stated that they were particularly pleased that Ofgem had listened to shipper concerns over the need to establish national governance/management of market rules/charging methodologies and encouraged a reluctant Transco to establish relatively broad based agency arrangements.
- 1.26 Nevertheless, this shipper/supplier stated that they had key concerns about:
- ◆ allowing twice yearly as opposed to once yearly changes to certain transportation charges;
 - ◆ drafting that too easily permits the movement of modification rules into short-form codes;
 - ◆ drafting that foresees/requires the introduction enduring offtake arrangements (despite the case for such changes having yet to be made); and
 - ◆ the introduction of unduly onerous obligations and unnecessarily prescriptive drafting.
- 1.27 This shipper/supplier also stated that the governance of technical standards may need to be revisited if an alternative mechanism for managing technical standards cannot be satisfactorily dealt with elsewhere.
- 1.28 This shipper/supplier further stated that it was necessary to amend Transco's GT licence by introducing a new relevant objective which anticipates DN sales in order to facilitate the Authority's consideration of modification proposal 0745. The respondent noted that this issue was explained in more detail in its response to modification proposal 0745.
- 1.29 This shipper/supplier noted that one lesson that has been learnt from the review of GT licences as part of the DN sales process is the need to have up to date

conformed copies of such licences that are freely available to all interested parties. This shipper/supplier stated that this was essential if parties are going to have a realistic chance of effectively scrutinising future proposed changes to GT licences. This shipper/supplier therefore urged Ofgem to introduce a new licence condition to oblige GTs to publish and regularly update a conformed copy of their gas transportation licences on a suitable website.

1.30 Another shipper/supplier stated that, in general, they supported the licence changes as drafted, with minor drafting corrections as detailed in their response. However, this shipper/supplier noted that:

- ◆ in relation to Standard Special Condition A33:
 - ◆ whilst they believed that the conditions associated with the separation of the NTS from the retained DNs were broadly sufficient, subject to some minor amendments, the current scope of Standard Special Condition A33 is too limited to provide proper protection of information in respect of the independent DNs (IDNs). However, this shipper/supplier noted that an additional consultation is planned by Ofgem on the inclusion of generation businesses, which would expand the scope appropriately;
 - ◆ in view of the fact that a new and complex regime was being implemented, which would necessitate behavioural changes among staff at the DNs, the report provided to the Authority under this condition should be subject to independent audit, and accompanied by a formal audit opinion in order to provide confidence in the robust nature of the new regime at least in the early years of the transition; and
- ◆ in relation to the price control licence conditions, that, as these conditions are subject to additional development and are expected to be subject to an additional consultation regarding the interim and enduring incentives regimes, they were not commenting formally at this stage, but instead have concentrated on the remaining conditions. This shipper/supplier reserved the right to respond once all the relevant

details have been clarified, and assumed that Ofgem had allowed sufficient time in the timetable to support such a process.

- 1.31 One shipper/supplier stated that they remained concerned with regard to a number of issues in relation to DN sales and the process followed, including process and timescales, costs, governance, the exit regime, metering and the signing process for DN sales agreements.
- 1.32 Another shipper/supplier noted that, while they welcomed certain changes being proposed by Ofgem to the NTS and DN-GT licences, they remained concerned about significant other areas, notably the licence conditions being proposed for the enduring exit arrangements and the DN interruption reform and recommended that Ofgem reconsidered the suitability of these proposed licence conditions.
- 1.33 One shipper/supplier reaffirmed that it was not opposed to the sale of four of NGT's distribution networks (DNs) as they considered this to be a commercial issue for NGT and many aspects of the proposed changes to the regime appeared to be satisfactory for ensuring minimal impact and disruption on shippers, suppliers and ultimately consumers. This shipper/supplier stated that there were many areas where they supported the approach Ofgem had recommended, noting that the establishment of an Agency was essential for ensuring that the potential for disruption to change of supplier processes and shipper activities was minimised.
- 1.34 However, this shipper/supplier stated that they continued to have serious concerns about some policies that Ofgem had promoted and the processes leading up to these proposed licence changes being proposed. In particular, they considered that the Authority's reasons for implementation as set out in their February decision document to be incomplete and insufficient, and therefore they objected to implementation by the Authority of the proposed licence conditions in their present form. This shipper/supplier stated that they had no wish to delay the sale itself but considered that these issues warranted serious re-consideration and therefore recommended that those licence conditions which were essential to the DN sales project were implemented with the remainder being subject to review and potentially reconsultation.

- 1.35 A number of shippers/suppliers noted that they had focused their comments on key areas that could have an adverse impact upon their shipping or supply businesses. In particular, one respondent referenced the stress on resources given other DN sales related consultations.

Other

- 1.36 In their response, the HSE noted that prior to publication of the February document, regular correspondence and meetings had taken place between Ofgem and the HSE, which have helped to clarify the requirements of both parties. The HSE noted that these discussions had focused on the specific aspects affecting the operation of the safety case regime as described in the Gas Safety (Management) Regulations 1996. These Regulations apply to all gas conveyors and are primarily concerned with the safe management of the flow of gas in the network, including the prevention and management of supply emergencies, and the provision of an emergency service.
- 1.37 The HSE noted that the sale by Transco of four of its regional distribution networks represents a significant change to the safety related procedures and management arrangements and that it was currently assessing both Transco's revised safety case and the safety cases of the IDNs. The HSE stated that these safety cases would not be accepted unless they were robust and satisfactorily demonstrated that risks would continue to be properly controlled.
- 1.38 In relation to one safety issue that had been considered in previous licence consultations, the HSE acknowledged the importance that Ofgem placed upon the necessary arrangements being in place between DNs regarding the provision of emergency services at DN boundaries. The HSE noted that both the HSE and NGT had confirmed that the provision of adequate arrangements at the network boundaries is considered within the safety case and that the HSE will not accept a safety case that fails to address this matter. Similarly the HSE noted that the requirement for transporters responding to an incident on a DN boundary to notify the DN whose network the incident is on is also covered by the safety case. The HSE therefore confirmed that it remained content that Ofgem was not proposing any licence modification to address these issues.

- 1.39 The HSE stated its understanding that other emergency service provisions would be included in the licences of all NTS and DN-GTs within Standard Special Condition A8 (Emergency Services and Enquiry Service Obligations).
- 1.40 The HSE stated that their response could be taken as confirmation that the HSE remains content with the suggested proposals. Furthermore, the HSE stated that they would continue to provide safety related input into Ofgem's work relating to DN sales as appropriate.

Ofgem's proposals

- 1.41 Ofgem would note that the proposed licence drafting has been developed following extensive formal and informal consultation (including "open door" work groups in the form of the DISG). In reaching its proposals, which were consulted upon on 14 February 2005 (the February document), Ofgem has considered the views expressed by all respondents to date. Ofgem has developed licence modification proposals following full consideration of respondents' views, but also with regard to its duties under the Gas Act and particularly its primary duty to protect the interests of customers.
- 1.42 With respect to the issue raised by a shipper/supplier with respect to modification proposal 0745, it is Ofgem's view that the modification is consistent with the relevant objectives set out within Amended Standard Condition 9 of Transco's licences, for the reasons outlined in the decision letter issued in this regard on 25 April 2005.
- 1.43 Ofgem notes the suggestion made by a shipper/supplier that Ofgem should introduce a new licence condition to oblige GTs to publish and regularly update a conformed copy of their gas transportation licences on a suitable website. Ofgem notes the rationale for making such a request, but would note that such a proposal should be considered across all licensed industries, and that it would not be appropriate to consider such a measure with respect to the licences of only relevant GTs as part of DN sales. However, Ofgem would not wish to discourage licensees from publishing conformed copies of their licences on their web-sites on a voluntary basis.
- 1.44 Ofgem notes the comments made by one shipper/supplier in relation to business separation, and addresses these in detail under Standard Special Condition A33

later in this Schedule. Ofgem would also note this shipper/supplier's comments in relation to the price control conditions, and would note that, whilst certain modifications are being directed as part of the associated Direction, these conditions will be subject to further modification proposals and a formal consultation to reflect Ofgem's proposals for the interim incentives and incorporate other modifications proposed.

- 1.45 Ofgem would further note that a number of the general issues raised by respondents above are addressed in further detail later in this Schedule.
- 1.46 The remainder of this Schedule describes, in relation to each relevant licence condition, the views expressed by interested parties, and Ofgem's proposals in the light of these responses.

Part A: Standard Special Conditions applicable to both NTS and DN licensees

Standard Special Condition A1. Application/Disapplication of standard conditions in Section A (Interpretation, Application and Payments) and Section B (General) and Application/Disapplication of Standard Special Conditions applicable to both NTS and DN licensees

Respondents' views

NGT

- 1.47 NGT did not comment on the switch on/off mechanism within its response.

Potential Purchasers

- 1.48 One potential purchaser noted that the switch on/off mechanisms introduced into Parts A and D of the licence gave rise to the potential for conflict, as the standard conditions in Sections A and B of the standard conditions could be switched off under one condition and left on under another. This potential purchaser restated the view expressed in response to the Next Steps document that it was inappropriate for this potential conflict to exist.

- 1.49 No other potential purchasers commented on the switch on/off mechanism within their responses.

Shippers/suppliers

- 1.50 One shipper/supplier stated that they were not restating their concerns in relation to the switch on / switch off provisions as these had been previously articulated in their responses to earlier licence consultations and the Gas Forum legal view on the Private Collective Licence Modification (CLM) Procedure.
- 1.51 One shipper/supplier noted that the cross-reference to paragraph 7 in paragraph 8 of this condition should be to paragraph 6. In addition, this shipper/supplier stated that the drafting of paragraph 1(ii) was particularly complex, and would benefit from additional clarification.

Ofgem's proposals

- 1.52 Ofgem has considered the concerns raised by one potential purchaser with regards to the operation of the switch on/off mechanism. However, Ofgem would note that standard conditions do not apply in respect of only one Part of the licence but rather to the licence in its entirety for each licensee. As such, the suspension of standard conditions necessary to introduce the new standard special conditions into Part A of the licence will operate such that these standard conditions are suspended for the entire licence and not just in respect of Part A for all NTS and DN-GTs. Standard Special Conditions Part B Directions or Standard Special Conditions Part D Directions may then require the additional switching on or off of standard conditions for the NTS or DNs respectively, as appropriate.
- 1.53 As drafted, the switch mechanism allows for a situation where it may be appropriate to switch on or off one or more standard conditions for one class of licensee but not the other e.g. a standard condition may be switched off within the licences of all DN-GTs, but not the NTS. Ofgem's policy intent is to retain such flexibility to address any future licence modifications.
- 1.54 Ofgem has today published, in parallel with this document, the Standard Special Conditions Part A Directions, a Standard Special Conditions Part B Direction and Standard Special Conditions Part D Directions which apply the switch as well as illustrating how the switch will be applied going forward.

- 1.55 Ofgem notes the comment made by the shipper/supplier in relation to the cross-reference within paragraph 8 and has corrected this within the accompanying section 8AA and section 23 directions. This is highlighted in the table provided in Schedule 2 and the licence drafting provided in Schedule 3.
- 1.56 Ofgem has reviewed the drafting of paragraph 1(ii) and believes that the drafting is fit for purpose and therefore proposes no modifications in this regard.

***Standard Special Condition A2. Private Collective Licence
Modification Procedure in respect of Standard Special
Conditions applicable to both NTS and DN licensees***

Respondents' views

NGT

- 1.57 NGT did not comment on the private CLM procedure within its response.

Potential Purchasers

- 1.58 One potential purchaser commented on Ofgem's private CLM proposals. This potential purchaser restated its concern with respect to the proposed blocking thresholds. This respondent stated that it understood the need and desire to replicate the appropriate statutory procedure (contained in section 23 of the Gas Act), but noted that in setting the thresholds following the 2000 Utilities Act, it was the DTI's intention that licensees within the same corporate group did not on their own achieve the threshold. This potential purchaser recognised that there may be insufficient time to change the proposed process before sale, but stated that it would welcome the opportunity to reconsider the CLM procedure post sale.
- 1.59 No other potential purchasers commented on the private CLM procedure within its response.

Shippers/suppliers

- 1.60 One shipper/supplier noted Ofgem's continued support for the private CLM process together with its expressed view that the process would not set a precedent given the exceptional circumstances involved.

- 1.61 One shipper/supplier stated that they agreed strongly with the legal advice obtained by the Gas Forum in November 2004 in relation to the Authority's proposals for the restructuring of GT licences and, as such, the whole of Ofgem's process for creating an appropriate licensing framework in consequence of the proposed network business sales was vitiated by the Authority's introduction into the licences of the private CLM procedure, the legality of which was, in their view, highly questionable.
- 1.62 This shipper/supplier noted that Ofgem had never specifically addressed the detail of the legal analysis given to the Gas Forum, which concluded that the private CLM approach was outwith the legislative policy that the primary mechanism for licence modifications should not be materially bypassed, but that Ofgem had simply asserted, without substantiating by relevant argument, that its licensing proposals had been developed in a manner consistent with the current statutory framework.
- 1.63 This shipper/supplier stated that this was not an example of robust and transparent regulatory practice, but rather an example of regulation in which the strict and proper application both of the law and of the wider policy objectives of the statutory framework for licence modification have been subordinated to ideology, or the exigencies of a predetermined timetable, or both. Another shipper/supplier agreed with this view, stating that, in keeping with the openness demonstrated in the rest of the consultation document, Ofgem should explain in detail why it believes it has the powers to introduce the private CLM condition.
- 1.64 Another shipper/supplier stated that they remained concerned about the complexity of the proposed arrangements for restructuring Transco's transportation licences and that this could result in the future new licence change process becoming unnecessarily costly and bureaucratic compared to the current arrangements, with the consequence that shippers would be less able to scrutinise effectively proposals.
- 1.65 This shipper/supplier also noted that they had stressed their concern about the potential use of similar "self modification" powers being applied to other licensed activities, such as generation or electricity distribution. This shipper/supplier stated that Ofgem was correct in stating that it would not be possible to introduce private CLM procedures into other licences without licensee consent but that this would not preclude Ofgem from citing precedents

(a device successfully used in the past) to justify the implementation of future controversial licence changes.

Ofgem's proposals

- 1.66 Ofgem notes the views expressed by a potential purchaser with regards to the private CLM procedure and the associated voting thresholds. Ofgem would also note that these views were expressed prior to the publication of the February document. Ofgem has therefore taken these views into full consideration when determining its proposals and remains of the view that it would not be appropriate to do anything other than to mirror (as far as possible) the statutory voting thresholds as part of DN sales. A fuller explanation of Ofgem's position in relation to this point can be found in the relevant section of the February document⁹.
- 1.67 In relation to the concerns raised by a shipper/supplier, Ofgem would note that it continues to believe that in order to protect the interests of customers, it is appropriate to restructure the NTS and DN-GT licences and to introduce the private CLM procedure. The scale of the necessary changes to the NTS and DN-GT licence conditions required as a result of a divested industry structure would substantially restrict the effectiveness of the statutory CLM procedure in respect of the NTS and DN-GT licences. Therefore, in order to ensure that the flexibility afforded by such arrangements continues, it is necessary to introduce the private CLM procedure.
- 1.68 Ofgem also does not agree with the view that the private CLM procedure and associated restructuring of the GT licence will result in changes to the licences becoming increasingly bureaucratic and costly. On the contrary, the private CLM procedure proposals have been put forward to ensure that the relatively efficient and flexible mechanism for securing licence modifications offered by the statutory CLM procedure can continue (although adapted as required pursuant to a divested gas industry structure) and that the inflexibility and cost that would be caused if each licence holder was required to consent individually to each licence modifications is avoided.

⁹ 45/05 - National Grid Transco – potential sale of gas distribution network businesses - Formal consultation under section 23 and section 8AA of the Gas Act 1986. Page 341-343

- 1.69 Ofgem notes that the points raised by respondents regarding the legality of the introduction of the private CLM procedure were also raised in response to previous licence consultations. As stated in these previous consultations, Ofgem has analysed the concerns raised by respondents and is satisfied that the proposals have been developed within the limitations of the current statutory framework and in compliance with the Authority's statutory and common law duties. However, Ofgem does not believe that it would be appropriate to disclose privileged legal advice.
- 1.70 In respect of the concern raised that the introduction of the private CLM procedure into the licences of NTS and DN-GTs could set a precedent for the introduction of similar procedures into the licences of other classes of licensees, Ofgem considers that the circumstances in which it is introducing these conditions are exceptional. Furthermore, given the structure of all other industry sectors which Ofgem regulates, such exceptional circumstances are very unlikely to be replicated elsewhere. Even if such unlikely and exceptional circumstances were to arise, the consent of the licensees in question would be required.

Standard Special Condition A3. Definitions and Interpretation

Respondents' views

NGT

- 1.71 NGT did not comment on Standard Special Condition A3 within its response.

Potential Purchasers

- 1.72 One potential purchaser stated that it thought that the reference to the balancing of the transportation system within the definition of "supply of transportation services" was misleading. This potential purchaser stated that the drafting was aimed at the procurement of shrinkage and that the words "balancing of the transportation system" could be deleted without effect.
- 1.73 No other potential purchasers commented on Standard Special Condition A3 within its response.

Shippers/suppliers

- 1.74 One shipper/supplier stated that the definitions of NTS exit capacity and NTS exit flow flexibility should be drafted in such a way as to facilitate only the day 1 (“interim”) arrangements. It was this respondent’s view that, to draft these definitions in such a way that assumes the introduction of a particular form of “enduring” arrangements could pre-judge the outcome of a possible future UNC modification proposal. This shipper/supplier noted that the exit flow flexibility product is a concept that may form part of the “enduring” offtake arrangements, but that it was not one that needed to apply to shippers at this stage.
- 1.75 This shipper/supplier also noted that Ofgem may conduct a further “sweep-up” section 23 process to deal with any minor inconsistencies that might emerge, for example, in relation to definitions to ensure consistency with the UNC and that they would support such a move.
- 1.76 Another shipper/supplier noted that the definition of “metering equipment” in this Standard Special Condition A3 refers back to section M of the 1997 version of the Network Code. This shipper/supplier noted that the same device was used in a number of places in the licence drafting, and stated that it would be beneficial to reproduce the relevant text, either as part of the definition, or as a supplementary annex to the conditions to aid accessibility.

Ofgem’s proposals

- 1.77 Ofgem notes the comments raised by a potential purchaser in relation to the definition of “supply of transportation services”. However, Ofgem remains of the view that the drafting of this definition is appropriate and that the phrase “balancing of the transportation system” is needed to give the acquisition of shrinkage gas context and purpose – the “acquisition or disposal of gas to replace gas lost from the transportation system” is not a purpose in and of itself. Furthermore, Ofgem would note that the wording within this definition is consistent with that used in the definition of “shrinkage procurement” within Standard Special Condition D4. Furthermore, as defined, “transportation system” is licence specific and therefore the acquisition or disposal of shrinkage gas relates only to the balancing of the licensee’s pipe-line system. Therefore, Ofgem does not propose any changes.

- 1.78 Ofgem would also note the comments raised by a shipper/supplier regarding the validity of including definitions for NTS exit capacity and NTS exit flow flexibility such that they assumed the introduction of a particular form of “enduring arrangements”. However, Ofgem notes that NTS exit flow flexibility is part of the incentive arrangements proposed within the interim period for the DNs. Furthermore, references to NTS exit flow flexibility and NTS exit capacity within the charging conditions (Special Condition C7 and Standard Special Condition D11) were introduced to provide some reassurances to shippers with respect to the frequency of charge changes. As such, it is necessary to retain the definitions of “NTS exit capacity” and “NTS exit flow flexibility” in Standard Special Condition A3. Furthermore, it is Ofgem’s view that if it should be necessary to modify these definitions, following the outcome of a future UNC modification proposal with regard to enduring arrangements, such modifications could be performed at the same time as the other licence modifications that will be necessary to implement such enduring arrangements.
- 1.79 Ofgem notes the comments made by a shipper/supplier in relation to the definition of “metering equipment” and the references within this definition, and other parts of the licence, to a past version of the Network Code. Ofgem would note that it has considered the possibility of including such text within the licence itself, but reached the conclusion (which was shared at DISG 33) that this was not possible given the volume of text involved. However, Transco has provided the relevant extracts from the appropriate versions of the Network Code for information, which are attached in Attachment 1.

Standard Special Condition A4. Charging - General

Respondents’ views

NGT

- 1.80 NGT did not comment on Standard Special Condition A4 within its response.

Potential Purchasers

- 1.81 One potential purchaser stated that the cross reference to sub-paragraph (b) of paragraph 2 within paragraph 2A should be to sub-paragraph (d).

- 1.82 No other potential purchasers commented on Standard Special Condition A4 within their responses.

Shippers/suppliers

- 1.83 Three shippers/suppliers stated their opposition to the proposed reasonable endeavours obligation for twice yearly changes (on 1 April and 1 October) in relation to some NTS charges:
- ◆ one shipper/supplier stated that the NTS-GT should be required to use reasonable endeavours to make changes to all transportation charges only once per year rather than twice per year. This shipper/supplier stated that to allow a starting point of twice per year would appear, based on past performance, to suggest that there will be at least two changes per year with the potential for more than two, which would be completely unacceptable;
 - ◆ one shipper/supplier stated that they were disappointed that, despite strong representations from shippers and their customers, Ofgem were willing to allow twice yearly changes to charges, even though they had originally advocated a once a year change; and
 - ◆ one shipper/supplier stated that they remained of the view that charging methodologies should only be subject to change once per year due to the impact such changes may have on invoice charge code which would require shipper and the Agency to make adjustments to their systems.
- 1.84 One of these shippers/suppliers noted that shippers and customers continued to have a strong preference for a 1 October, once a year change to achieve certainty and align changes to annual contracting rounds. This shipper/supplier noted that variation from year to year was inevitable, but that this was an unfortunate consequence of the volatile charging arrangements that had been established in recent years. This shipper/supplier expressed concern that price volatility would increase if new exit capacity and flow flexibility auctions were introduced as part of any “enduring” arrangements due to likely revenue over or under recoveries for such auctions. This shipper/supplier stated that Ofgem should focus on addressing the factors that force transporters to adjust charges too frequently, namely the best endeavours revenue recovery obligations and the

proposed move away from administered approaches for charging for exit capacity.

- 1.85 This shipper/supplier stated that they understood Transco's concerns with regard to its revenue recovery obligations, but that these concerns should not take precedence over the interests of customers. This shipper/supplier stated that the dead-band around which the standard interest rate would apply appeared to be a pragmatic way of addressing Transco's concerns.
- 1.86 This shipper/supplier also stated that requests from potential buyers to align charging changes to the formula year (1 April) should not be entertained.
- 1.87 The same shipper/supplier welcomed proposals which were designed to mitigate the risk of inefficient fragmentation of the distribution charging arrangements, including the establishment of a Joint Office (JO) to co-ordinate proposed changes across the industry. This shipper/supplier further stated the importance of licence conditions that subject all DNs to national charging methodologies managed by the Joint Office to provide a stable framework within which each of the discrete charging elements remains consistent for billing purposes across the whole country. This shipper/supplier stated that in the absence of such arrangements, the emergence of different DN charging methodologies could increase costs, lead to different treatment of similar size customers simply on the basis of network ownership and limit the number of suppliers willing to compete in particular segments of the market (particularly in relation to multi-site supply contracts). However, this shipper/supplier recognised that different levels of charges may be appropriate for particular DNs to better reflect costs and that this was less significant in driving shipper costs than the introduction of new and discrete charging elements.
- 1.88 One shipper/supplier stated that, given that the 150 days' notice period for the Authority to be informed of "indicative" changes to charges is included within the licence, they would like to see the 60 days' notice of "actual" changes to charges included for consistency.
- 1.89 This shipper/supplier also made the following drafting comments:
- ◆ that, in their view, in paragraph 2(c) after sub-paragraph (a), "of paragraph 1" should be inserted;

- ◆ that it may be clearer to reword paragraph 2(d) so that it reads “give the Authority notice of any proposals to change the charges or reserve charges mentioned in paragraph 1 which it is considering...”;
- ◆ that in paragraph 2(e), in the final line, it may be useful to specify the sub-paragraph as (e); and
- ◆ that, in respect of paragraph 8(b), they were unsure of the effect of this paragraph, and requested an example of the type of charges which might be levied as a result of this provision.

1.90 This shipper/supplier also expressed concern in relation to the provisions that augment Standard Special Condition A4 (Charging – General) with respect to informing the Authority should they fail to meet their reasonable endeavours obligation. This shipper/supplier noted that the licensee had a period of three months after the charge change had been implemented to make such a submission to the Authority. This shipper/supplier stated that they were concerned that this would not allow the Authority an opportunity to veto inappropriate changes. However, this shipper/supplier stated that they believed that if a change were to be implemented which would fail the test against the Relevant Objectives, then the licence itself should provide an adequate protection.

Other respondents

1.91 The AEP stated that it supported Ofgem’s proposals that related to annual changes to NTS charges for flow flexibility and exit capacity and DN charges once a year on 1 October. However, the AEP stated that it did not support the proposal in relation to twice yearly NTS charge changes. With respect to this latter proposal, the AEP expressed surprise that Ofgem has moved from its original position, where it appeared to favour restricting changes to charges and methodology to once a year as changing charges once a year on 1 October is in customers’ interests as this will reduce uncertainty in charges and improve charging stability. The AEP also noted that an important aspect of this was the notice period for changes to charges and welcomed the retention of the 150 day notice period.

- 1.92 The AEP also expressed concern that the charge change proposals are insufficiently clear and asked whether the restrictions on changing charges that relate to exit capacity and flow flexibility relate to all charge elements of these products or just the capacity element, and asked whether TO commodity charges (arising from an under or over recovery of revenues following exit capacity auctions) and flow flexibility commodity charges were restricted to a once a year change. The AEP stated that, in its view, the revenue arising from the proposed commodity charge is exit capacity or flow flexibility revenue and should be restricted to a once a year change.

Ofgem's proposals

- 1.93 Ofgem notes the comments made by a potential purchaser with respect to the cross-referencing within paragraph 2A to sub-paragraph (b) of paragraph 2. However, whilst sub-paragraph 2(b) is marked as “not used”, it is augmented by Special Condition C7 (Charging Obligations) in the case of the NTS and Standard Special Condition D11 (Charging Obligations) for DN-GTs. Once augmented, paragraph 2(b) relates to information to be provided to the Authority, and therefore the cross-reference is correct.
- 1.94 Ofgem has considered shipper/supplier concerns and those expressed by the AEP regarding the frequency of changes to charges. Ofgem notes the views expressed by respondents in relation to the frequency with which the NTS should change its charges on a reasonable endeavours basis.
- 1.95 Ofgem would note that the charge change provisions within the licence have been introduced in response to shipper and customer group concerns and furthermore that similar arrangements are not in place in the electricity industry. Ofgem would also note that the charge change obligations have been strengthened by requiring the NTS to change NTS exit capacity and NTS exit flow flexibility related charges only once a year and to require the licensee to submit reasons to the Authority in writing (for subsequent publication) explaining any failure to comply with this reasonable endeavours obligation.
- 1.96 Furthermore, Ofgem would note that the reasonable endeavours obligation should not increase the frequency of changes to charges, but should incentivise NTS and DN-GTs to reduce the frequency of charge changes and / or coordinate changes to their charges on specific dates to the potential benefit of shippers. As

such, Ofgem believes that a twice a year obligation upon NTS charges that are not related to NTS exit capacity or NTS exit flow flexibility is appropriate and no changes are proposed in this regard.

- 1.97 In response to the questions raised by the AEP, Ofgem would note that restrictions on changing charges that relate to exit capacity and flow flexibility did not relate to TO commodity charges (arising from an under or over recovery of revenues following exit capacity auctions). Ofgem would note the AEP's view that the revenue arising from the proposed commodity charge is exit capacity or flow flexibility revenue and should be restricted to a once a year change. However, Ofgem would note that, as noted in the February document, should the outcome of Transco's forthcoming pricing consultation result in such charges being passed through DNs from the NTS to shippers, then modifications to introduce annual charge change restrictions will be considered at that time.
- 1.98 Ofgem will be considering, as part of the next price control review, the extent to which the arrangements in gas and electricity should be aligned. As there is currently a dead-band in place in electricity, it is expected that there will be consideration of the application of a similar dead-band in gas at that time. However, Ofgem recognises that the introduction of a dead-band to apply to NTS and DN-GTs is not without cost to customers. On balance we therefore consider that it is not appropriate to introduce a dead-band to deal with issues related to DN sales at this time. If a dead-band were to be needed we consider that this should rightly be introduced at the time of the price control reviews when all other aspects of the price control are also being considered.
- 1.99 Ofgem continues to consider it to be appropriate for the Joint Office to take on an administrative co-ordination role in respect of the relevant GTs' charging methodologies. Ofgem notes shipper/supplier concerns with regards to the potential costs of divergent charging methodologies but considers that current proposals represent the correct balance between consistency and stability for shippers and allowing the relevant NTS and DN-GTs to innovate in the methods they use for transportation charging. Overall, Ofgem considers that its proposals seek to protect the interests of customers.
- 1.100 Ofgem continues to consider that it is not appropriate to go further than this and to require DNs to have common charging methodologies as this could unduly limit innovation by DN-GTs. However, Ofgem does recognise that divergent

methodologies would be a significant issue for shippers and that any such divergence could result in increased costs for shippers and therefore, ultimately customers. Ofgem therefore considers that before allowing any such divergence there would be a need to carry out an impact assessment to ensure that the interests of customers are protected.

- 1.101 Ofgem would note, in relation to the comments provided by one shipper/supplier, that it is appropriate for contractual terms regarding the requirement of a period of notice for changes to charges to be set out in the appropriate contractual document (i.e. the Network Code). Ofgem does not therefore consider it to be appropriate to include a requirement for the 60 day notice period for changes to transportation charges (currently within the Network Code) within the licence drafting for Standard Special Condition A4 (Charging – General), and as such, no modifications are proposed in this regard.
- 1.102 In relation to the other drafting comments raised by this shipper/supplier, Ofgem would note that:
- ◆ the reference within paragraph 2(c) to paragraph (a) is correct, and should be to paragraph 2(a) rather than sub-paragraph (a) of paragraph 1. This is because whilst sub-paragraph 2(a) is marked as “not used”, it is augmented by Special Condition C7 (Charging Obligations) in the case of the NTS and Standard Special Condition D11 (Charging Obligations) for DN-GTs. Once augmented, paragraph 2(a) relates to changes to charges, and therefore the cross-reference is correct;
 - ◆ in relation to the clarity of paragraph 2(d), Ofgem would note that this is an issue that existed within the licence prior to the advent of DN sales but that the clarity could be improved and will consider how to address this as part of the April section 23 consultation;
 - ◆ the suggested clarification to paragraph 2(e) is unnecessary (consistent with paragraph 6 of Standard Special Condition A3 (Definitions and Interpretation), and therefore that no change is required; and
 - ◆ in respect of paragraph 8(b), this provision relates to charges calculated and defined under the network code such as scheduling charges, imbalance charges, and overrun charges.

- 1.103 Ofgem would state that, in the event that changes to charges are implemented that are not consistent with the reasonable endeavours obligation, the licensee would have a period of three months after the charge change had been implemented to make a submission to the Authority stating the reasons for such a change. If these reasons do not support compliance with this reasonable endeavours obligation, then this would constitute a potential breach of the licence and be considered accordingly.

Standard Special Condition A5. Obligations as Regard Charging Methodology

Respondents' views

NGT

- 1.104 NGT did not comment on Standard Special Condition A5 within its response.

Potential Purchasers

- 1.105 Potential purchasers did not comment on Standard Special Condition A5 within their responses.

Shippers/suppliers

- 1.106 Comments raised by shippers/suppliers in respect of consistency in charging methodologies are discussed under Standard Special Condition A4 (Charging – General) and not repeated here.
- 1.107 One shipper/supplier noted that the references to “sub-paragraphs (a)” in paragraph 5(c) should be to “sub-paragraphs (a) and (b)”.
- 1.108 This shipper/supplier also stated that it would be helpful to provide an end date in each year by which the report required under paragraph 3 should be furnished to the Authority.

Ofgem's proposals

- 1.109 Ofgem notes the comment made by the shipper/supplier in relation to the cross-reference within paragraph 5(c) and proposes to correct this as part of the April section 23 consultation.

- 1.110 In relation to this shipper/supplier's comments on the end date by which the report required under paragraph 3 should be furnished to the Authority, Ofgem would note that this report covers the 12 month period preceding 1 October in each formula year, and that as such, licensees would have a six month window within which to comply with their licence. However, Ofgem would note that, the previous drafting of Transco's licences related to the calendar year, and as such, the implicit deadline was 31 December. In order to maintain consistency, Ofgem will therefore consider whether to impose a deadline as part of the April section 23 consultation.
- 1.111 Ofgem's proposals in relation to consistency in charging methodologies are discussed under Standard Special Condition A4 (Charging – General) and not repeated here.

Standard Special Condition A7. Requirement to Enter into Transportation Arrangements in Conformity with the Network Code

Respondents' views

NGT

- 1.112 NGT did not comment on Standard Special Condition A7 within its response.

Potential Purchasers

- 1.113 Potential purchasers did not comment on Standard Special Condition A7 within their responses.

Shippers/suppliers

- 1.114 One shipper/supplier supported the incorporation of offtake related terms within the UNC with any changes subject to the UNC modification rules. This shipper/supplier stated that this approach was consistent with their view that all commercial terms for the transportation of gas from "beach to meter" should reside in one place with all parties to the current network code continuing to have rights to propose changes to such terms.

Ofgem's proposals

- 1.115 Ofgem welcomes the support from the shipper/supplier that commented on this condition for its proposals and does not propose any changes in this regard.

Standard Special Condition A8. Emergency Services and Enquiry Service Obligations

Respondents' views

NGT

- 1.116 NGT did not comment on Standard Special Condition A8 within its response.

Potential Purchasers

- 1.117 Potential purchasers did not comment on Standard Special Condition A8 within their responses.

Shippers/suppliers

- 1.118 One shipper/supplier noted that paragraphs 12 and 13 referred to "arrangements" without stating that these arrangements were those referred to in paragraph 8, and, as such, there was a lack of clarity.

Ofgem's proposals

- 1.119 Ofgem notes the comment made by the shipper/supplier in relation to paragraphs 12 and 13 and proposes to address this as part of the April section 23 consultation.

Standard Special Condition A9. Pipe-Line System Security Standards

Respondents' views

NGT

- 1.120 NGT did not comment on Standard Special Condition A9 within its response.

Potential Purchasers

- 1.121 No potential purchasers commented on Standard Special Condition A9 within their responses.

Shippers/suppliers

- 1.122 One shipper/supplier stated that it was not necessary at this time to add the wording “including but not limited to, within day gas flow variations on that day”, and that the addition of such wording or similar should be considered as part of the discussion to introduce the enduring offtake arrangements. Another shipper/supplier agreed with this point, stating that the redefinition of the 1 in 20 obligation for day 1 post DN sales should be removed. However, this respondent accepted that the new revised 1 in 20 obligation set out in Standard Special Condition A9 did not, in itself, seem to reduce the access rights currently enjoyed by NTS direct connects.

Other respondents

- 1.123 The AEP agreed that the security standards should be consistent across all GTs and stated that it was comfortable with the proposal in so far as this did not lead to a lower degree of system security.
- 1.124 The HSE agreed that a licence condition should apply to both NTS and DN-GTs in respect of the 1 in 20 obligation to ensure that there is clarity regarding the security standards and a commitment from these parties to develop their networks to meet daily gas demands. The HSE noted that they were content with the change to the wording of proposed Standard Special Condition A9 (Pipe-Line System Security Standards) (previously Standard Condition 16) to ensure that the obligation takes account of within day gas flows variation.

Ofgem’s proposals

- 1.125 Ofgem notes the comments made by shippers/suppliers with respect to the proposed drafting change to Standard Special Condition A9 (Pipe-Line System Security Standards). However, Ofgem notes that such wording serves to ensure that the 1 in 20 standard is not diminished, is effective in a divested industry structure and provides the necessary clarity for new DN owners as to the standards required both now and in the future. Ofgem also notes that the HSE is

content with the change proposed. As such, it is Ofgem's view that it is appropriate to introduce such wording at this stage.

Standard Special Condition A10. Provision and Return of Meters

Respondents' views

NGT

- 1.126 NGT did not comment on Standard Special Condition A10 within its response.

Potential Purchasers

- 1.127 One potential purchaser noted that in paragraph 6 the cross-reference to Standard Condition 5 should be to Standard Special Condition A50.
- 1.128 No other potential purchasers commented on Standard Special Condition A10 within its response.

Shippers/suppliers

- 1.129 One shipper/supplier also noted the cross-referencing error in paragraph 6.

Ofgem's proposals

- 1.130 Ofgem notes the comment made by the potential purchaser and shipper/supplier in relation to the cross-reference within paragraph 6 and has corrected this as part of the accompanying section 8AA and section 23 directions. This is highlighted in the table provided in Schedule 2 and the licence drafting provided in Schedule 3.

Standard Special Condition A11. Network Code and Uniform Network Code

Respondents' views

NGT

- 1.131 NGT did not comment on Standard Special Condition A11 within its response.

Potential Purchasers

1.132 Two potential purchasers provided comments on the drafting of Standard Special Condition A11:

- ◆ one stated that in paragraph 1(b), the reference to “economical” should be to “economic”; and
- ◆ another stated that the definition of "network code modification procedures" the cross-reference to paragraph 6 should be to paragraph 7.

Shippers/suppliers

Relevant objectives

1.133 One shipper/supplier supported the introduction of the new relevant objective in relation to the promotion of efficiency in the implementation and administration of the network code and/or the UNC. However, this respondent questioned whether this objective needed to be made more explicit to make sure there is no doubt that this relevant objective applies to the Agency in implementing the UNC.

Publication of the UNC

1.134 This shipper/supplier welcomed the new clause requiring the transporters to publish the UNC on a web-site which is freely available to interested parties. This respondent stated that any changes to these documents should be promptly updated, and that this could be managed by the Joint Office or the Agency. This shipper/supplier stated that, ideally, they would like to see an Elexon style website providing all relevant industry code and transportation charging related documents, including modification reports, Panel and workstream reports.

UNC modification procedures

1.135 One shipper/supplier stated that complexity and inefficiency in industry code modification procedures was contributing to progressively diminishing participation over time. This shipper/supplier stated that they did not want the modification process to become a tactical assault course for proposers, but that the process should be streamlined and effective and deliver all viable solutions to the Authority for a decision.

- 1.136 The same shipper/supplier stated that the current drafting of paragraph 8 of Standard Special Condition A11 makes it too easy for DN operators to opt out of the common UNC modification procedures. This shipper/supplier noted that common governance arrangements were vital to avoid inefficient fragmentation of the market rules and the potential for shippers to incur significant costs. This shipper/supplier stated that licensees wishing to opt out of these arrangements should seek a specific licence change to facilitate this at the time, and therefore that the words “unless the Authority consents otherwise in writing” should be deleted. This shipper/supplier stated that it was important to ensure that this clause was not used as a “back-door” route to allow modification rules or for that matter any other UNC terms to be “carved-out” into individual codes and that such changes should be subject to a UNC modification procedure with parties potentially having the opportunity to appeal an Authority decision on any such proposal.
- 1.137 Three shippers/suppliers stated that paragraphs 10 (b) and 11 (b) were, in their view, unnecessarily prescriptive providing a level of detail that would be more appropriate within the industry UNC modification rules.
- 1.138 One shipper/supplier drew parallels with the Balancing and Settlement Code (BSC) and noted that shippers generally do not wish to adopt the complex, bureaucratic and sometimes ineffective alternative modification procedure of the BSC, which allows little scope for refinements to the original proposal and the process for developing alternatives has become a vehicle for sabotaging the original proposal¹⁰.
- 1.139 This shipper/supplier noted that, under a Gas Forum modification proposal 0713, if a consensus emerges in the workgroup prior to the consultation phase, the original proposal could be “refined” and adopted as the proposal and that in such circumstances the inadequate pre-refined proposal would not go forward to the consultation stage. In addition, this shipper/supplier noted that viable “alternatives” may emerge in workgroup discussions where these are not adopted as the original proposal and that a fast-track process had been proposed to enable such separately numbered “alternatives” to be considered as discrete

¹⁰ P75 Introduction of zonal transmission losses where some parties sought to phase its introduction was provided as an example.

but parallel proposals, providing clarity in terms of modification decisions and any basis for future appeals (whatever the criteria for appeals may be).

- 1.140 Another shipper/supplier stated that it was not clear whether the provision for an alternative modification proposal was intended to replace or supplement the ability to develop modifications through the workgroup process. They expressed a concern that, if it is intended to replace, this would lead to a loss of flexibility. This shipper/supplier also requested clarity on whether a developed modification would constitute an "alternative" modification.
- 1.141 One shipper/supplier stated that the drafting of paragraphs 10(b) and 11(b) raised concerns that the definition of "alternative" may preclude legitimate refinements of proposals during the workgroup stage and could possibly prevent "alternative" proposals being considered under a separate modification number. This shipper/supplier noted that original proposers should not be given two "bites of the cherry", but that the Gas Forum proposal would only allow one good chance for the proposer, although many parallel discrete, separately numbered "alternatives" would be permitted by others.
- 1.142 Another shipper/supplier noted that the major industry criticism to date has been the differential regime with respect to the ability of a party (other than Transco) to vary a modification proposal that it had raised. If introduced, this would allow any proposer of a modification to respond to industry discussion and incorporate changes to their proposal accordingly. This shipper/supplier stated that they did see some limited value in the alternative proposal concept in that it would ensure a direct linkage with the original proposal. However, this respondent noted that the Modification Panel already has the ability to do this where it feels that two or more modifications cover similar areas.
- 1.143 This shipper/supplier noted that the modification rules as drafted for the UNC proposed improvements in the area of a user varying his proposal as well as introducing rules for alternative modification proposals.
- 1.144 Three shippers/suppliers noted that currently third party participants can only propose modifications to certain defined areas of the code, and that it was important to ensure that the ability of such third parties to propose alternatives is also limited to the same defined areas. One shipper/supplier expressed concern that Transco's transposition of licence drafting into the UNC could be

interpreted as giving third party participants the right to raise alternative modification proposals to any modification proposal. This shipper/supplier noted that Transco had added extra wording into the UNC to state that, for the avoidance of doubt, this is not the case.

1.145 This shipper/supplier and one other suggested the following drafting modifications to paragraphs 10(a), 10(b) and 11(b) should they remain, in order to avoid a situation arising where it could be claimed that the UNC is in breach of Standard Special Condition A11:

- ◆ amend paragraph 10(a)(iii) to read “any relevant shipper to the extent they are identified in the network code modification procedures as being entitled to propose a modification”, and amend paragraph 10(a)(iv) to read “any other relevant person (a “third party participant”) to the extent they are identified (individually or as a member of a class of persons) in the network code modification procedures as being entitled to propose a modification; and”; and
- ◆ amend paragraph 10(b) to read “where a modification proposal has been made under paragraph 10(a) (an “original proposal”) as allowed for under the network code modification procedures, alternative modification proposals may be made, in respect of any such original proposal, by any of the parties listed in paragraph 10(a) of this condition to the extent allowed for under the network code modification procedures” (with a similar modification proposed to paragraph 11(b).

1.146 Ofgem notes that as part of the proposed drafting changes to paragraphs 10(b) and 11(b), the phrase “with the exception of the person who made the original proposal” was proposed for deletion by this shipper/supplier. Following clarification with the shipper/supplier who made these drafting proposals, regarding their specific concern, this respondent confirmed that they did not have a fundamental objection to an original proposer being prevented from raising an alternative modification. Rather, it was their belief that it should be the modification procedures within the UNC rather than the licence that are used to define the detail of which parties can raise proposals, including alternative proposals, together with any restrictions that should apply to those parties and/or the types of proposals that they can raise.

- 1.147 One shipper/supplier stated their understanding that the intent of the voting is that there will always be a recommendation, for example, a simple majority of those present is required to produce a recommendation to implement, and failure of the vote produces a recommendation not to implement. This respondent queried whether a failure to recommend implementation is legally the same as a recommendation not to implement. This shipper/supplier expressed concern that if a recommendation was not made, the right of appeal may be ineffective.
- 1.148 This shipper/supplier also stated that the drafting of paragraph 19(a) may be ambiguous as it seemed to imply that there is a question as to whether the UNC would be implemented, but that it was this shipper/supplier's understanding that the UNC would need to be implemented at or around the same time as the licence was accepted.

Other respondents

- 1.149 Genserv also provided comments on the drafting of Standard Special Condition A11 as part of their response to the consultation on network code arrangements – Stage 1.
- 1.150 Genserv stated that they supported the introduction of the additional relevant objectives in paragraph 1, but proposed, in respect of paragraph 1(f), that an economic test should also be included.
- 1.151 Genserv noted that paragraph 2 clarified that the relevant objectives set out in paragraph 1 would not apply to a proposal to modify the modification procedures, but rather, such a proposal would be tested against paragraphs 9 and 12. Genserv stated their view that paragraph 9 would only provide a starting point by setting out basic requirements that the modification procedures must satisfy but without providing guidance on how the procedures might better develop over time.
- 1.152 Genserv stated that if Ofgem felt that it was inappropriate to include revised or new objectives within the licence then the incorporation of paragraphs 1(c) and 1(f) as relevant objectives for such proposals would give scope to introduce concepts such as effectiveness, efficiency, transparency, inclusivity, accountability and consistency which are absent from paragraphs 9 and 12.

- 1.153 Genserv further stated that it is unclear why the requirement to have alternative proposals had been incorporated in paragraphs 9(c), 10(b) and 11(b) as in practice these have proved confusing and difficult to administer. Genserv also noted that this requirement has also given rise to the inclusion in the Modification Rules of the ability to raise an alternative urgent proposal which may contravene paragraph 9(g) of Standard Special Condition A11.
- 1.154 Genserv further noted that paragraph 15(a)(iv) did not require that any recommendation regarding implementation of a proposal be made, or that where one is made that it should be made by any particular person or body, but rather that such questions are left to the requirements of the modification procedures.

Ofgem's proposals

- 1.155 Ofgem notes the comments made by two potential purchasers on this condition, and proposes the following treatment:
- ◆ to propose that the reference to “economical” in paragraph 1(b) should be changed to “economic” as part of the April section 23 consultation; and
 - ◆ that the cross-reference within the definition of “network code modification procedures” is corrected. This has been included in the accompanying section 8AA and section 23 directions. This is highlighted in the table provided in Schedule 2 and the licence drafting provided in Schedule 3.

Relevant objectives

- 1.156 Ofgem has considered the comments raised by a shipper/supplier in relation to the relevant objectives and the extent to which it is clear that the objective in paragraph 1(f) of Standard Special Condition A11 applies to the Agency in the implementation of the UNC. However, Ofgem would note that this relevant objective is repeated in paragraph 1(a) of Standard Special Condition A12 (Joint Office Governance Arrangements) which also states that the licensee shall, together with all other relevant gas transporters, establish, operate and develop arrangements for:

- ◆ the administration of the network code modification procedures; and
- ◆ the administration of such matters as are provided for in the uniform network code to be implemented by the relevant GTs on a common, joint or coordinated basis, consistent with the provisions of Standard Special Condition A15 (Agency).

1.157 As such, Ofgem does not believe that further clarification is needed in this regard.

1.158 With respect to the comments made by Genserv, Ofgem would make the following comments:

- ◆ that, in relation to the request for an economic test to be included within the relevant objective in paragraph 1(f), such a test is not appropriate as the intent of the drafting is to allow the Authority the discretion to assess operative effect and implications for the interaction between the uniform network code and network codes. Furthermore, it is Ofgem's view that any further explanation of how individual objectives should be fulfilled should be set out in the modification procedures themselves rather than in the licence; and
- ◆ that, in relation to the proposals in respect of paragraphs 9 and 12, the effect of the drafting of paragraphs 9 and 12 is such that they apply only to the extent that they do not conflict with paragraph 1. This is further reinforced by paragraph 7 which states that the network code modification procedures should better facilitate the achievement of the relevant objectives in paragraph 1. As such, Ofgem does not propose any modifications in this regard.

Publication of the UNC

1.159 Ofgem has also considered the response raised by a shipper/supplier regarding the publication of the UNC on a website which is freely available to interested parties. Ofgem would note that the obligations of paragraph 17 of Standard Special Condition A11 are among those listed in paragraph 4 of Standard Special Condition A12, and as such, it is made clear within the licence that compliance with the obligation to publish the UNC on a website can be achieved by means of the joint governance arrangements. Therefore, whilst the licence does not

require the publication of the UNC on a single, central website, it is envisaged that such a function could be performed by the Joint Office or the Agency. Ofgem would expect updates to the UNC to be published on the web within a reasonable amount of time and would consider the imposition of time limits at a future date if delays were proving excessive.

UNC modification procedures

- 1.160 In relation to the comments made by the same shipper/supplier regarding the drafting of paragraph 8, Ofgem would note that on day one of the UNC all substantive transportation arrangements will be set out in the over-arching UNC. However, there is flexibility for modifications to be proposed to move provisions from the UNC to the “short form” network code (SFC) of a NTS or DN-GT if this would better facilitate the relevant objectives of the UNC and the SFC. The modification procedures for the UNC and the individual SFCs will sit within the UNC. However, as stated in paragraph 8, with the Authority’s consent it would be possible for the modification procedures of a SFC to be removed from the UNC and placed into that SFC. Of course, the Authority would only issue such consent after full consideration of the relevant objectives and the cost implications for those that are party to the UNC and the SFCs. Given this check by the Authority, Ofgem does not propose any changes to Standard Special Condition A11 in this regard.
- 1.161 Ofgem has fully considered the comments raised by shippers/suppliers on the drafting of paragraphs 10 and 11 of Standard Special Condition A11. Ofgem notes that the drafting of Standard Special Condition A11 achieves Ofgem’s policy intent, but would further note that the provisions of paragraphs 10 and 11 of Standard Special Condition A11 are subject to the detail of the network code modification rules.
- 1.162 In relation to comments on paragraphs 10(b) and 11(b), Ofgem would note that the drafting of paragraphs 10(b) and 11(b) is not as restrictive as the respondents suggest because it simply states that alternative modification proposals **may** be made by the listed parties. Furthermore, whilst it is Ofgem’s policy intent that an “original proposer” should be excluded from raising alternative modifications, Ofgem would note that Standard Special Condition A11 does not preclude refinements by a proposer of their original proposal.

- 1.163 In addition, with respect to the comments raised by another shipper/supplier, regarding the relationship between alternative modification proposals and the workgroup process, Ofgem would restate that the drafting of paragraphs 10(b) and 11(b) is not prescriptive in this regard. As such, the alternative modification proposal provisions should supplement the ability to develop modifications through the workgroup process.
- 1.164 With regards to comments raised by shippers/suppliers in relation to the proposal by third party participants of code modifications, Ofgem would note that the drafting of paragraph 10 (a) is not as restrictive as these shippers/suppliers appear to suggest as it simply states that a modification proposal **may** be made by the listed parties. Furthermore, the drafting of Standard Special Condition A11's predecessor, Amended Standard Condition 9, stated that the modification procedures shall provide for the making of proposals either by the licensee or by a relevant shipper or by a third party participant. As such it was the drafting of the network code that further limited the role of third party participants rather than the licence, and the new licence drafting has done nothing to alter the scope for this.
- 1.165 Ofgem notes that one shipper/supplier has made drafting proposals with respect to paragraphs 10 and 11. Given Ofgem's views, as stated above, in relation to the drafting of paragraphs 10 and 11, Ofgem does not believe that such modifications are necessary. As a result, Ofgem does not believe that it is necessary to clarify the drafting of either paragraph 10 or paragraph 11 and, as such, no change is proposed in this regard.
- 1.166 In relation to the comments raised by one shipper/supplier regarding the recommendations process. It is Ofgem's view that this is a UNC issue rather than a licence issue, and therefore no licence amendments are required in this regard at this time.
- 1.167 In relation to the comments made by a shipper/supplier on the drafting of paragraph 19(a), Ofgem has reviewed this drafting and notes that this refers to the implementation of the proposal to modify. However, Ofgem proposes to clarify the drafting in this regard as part of the April section 23 consultation.
- 1.168 In relation to the comments made by Gemserv in the relation to the UNC modification procedures, Ofgem would note that:

- ◆ the requirement for alternative proposals is consistent with Ofgem's policy intent and that, in relation to alternative proposals to urgent modification proposals, paragraph 9(g) simply requires the modification rules to make provision for different procedures where a proposal is regarded by the Authority as urgent. This is not inconsistent and, indeed, reflects the effect of the current procedure. As such Ofgem does not propose any modifications in this regard; and
- ◆ in relation to the comments made on paragraph 15(a)(iv), Ofgem considers that the current ability of only Transco to make a recommendation is not appropriate in a multi GT environment. Ofgem further notes that it is for Transco to propose a way forward in this regard within the UNC. As such, the drafting of paragraph 15(a)(iv) is not intended to be prescriptive and Ofgem does not propose any modifications.

Standard Special Condition A12. Joint Office Governance Arrangements

Respondents' views

NGT

1.169 NGT did not comment on Standard Special Condition A12 within its response.

Potential Purchasers

1.170 No potential purchasers commented on Standard Special Condition A12 within their responses.

Shippers/suppliers

1.171 One shipper/supplier stated that, generally, they were supportive of the proposed changes, but that there were a number of points of detail and interpretation that concerned them. This shipper/supplier stated that they would have preferred a more arms length arrangement, with complete separation of Joint Office staff from the transportation business, but that this debate may be more appropriate at a future point.

1.172 This shipper/supplier stated that it had been frustrating that, despite outline agreement on the Governance and Agency arrangements last summer, Transco had only recently published its Joint Office Agreement. This shipper/supplier stated that some of the elements of this agreement seem to compete with the modification rules set out in the UNC, for example the chairman's guidelines following approval of modification proposal 0709 should be entirely a matter for the modification rules and not the Joint Office Agreement. This shipper/supplier also noted that any UNC related matters, including the SME Code of Conduct covered by the Joint Office should be subject to ratification by the Network Code Panel prior to seeking approval from Ofgem, given that the new UNC governance arrangements are supposed to be designed to ensure that both shippers and transporters have equal say. This shipper/supplier noted that it would be inappropriate for transporters to agree such matters without involving shippers in the decision making process.

1.173 Another shipper/supplier stated that, in paragraph 4(a)(vii), it would be clearer to specify that one copy of the summary, on behalf of all NTS and DN-GTs is sufficient for the UNC, although each short form code may merit its own summary on the basis of one summary per document. This shipper/supplier also considered that it may be helpful to extend the obligation to provide a summary to the suite of UNC documents.

Other respondents

1.174 Gemserv provided comments on the drafting of Standard Special Condition A12 as part of their response to Stage 1 of the consultation on network code arrangements. These comments were as follows:

- ◆ that Standard Special Condition A12 should be titled "Joint Governance Arrangements" as it does not require a Joint Office to be created;
- ◆ that in paragraph 1(a), the use of the phrase "establish, operate and develop" may be restrictive and that it may be more efficient and economical if transporters were required to "establish, develop and operate (or procure the operation of)" the arrangements; and
- ◆ that in paragraph 2(c), the joint governance arrangements should be such that they avoid undue discrimination or preference as between the

relevant GTs and relevant shippers rather than just between relevant gas transporters.

Ofgem's proposals

- 1.175 Ofgem notes the points raised by a shipper/supplier in relation to Transco's Joint Office Agreement. However, it is Ofgem's view that this is a UNC issue rather than a licence issue, and therefore no licence amendments are required in this regard at this time.
- 1.176 In relation to the shipper/supplier comments received in relation to paragraph 4(a)(vii), Ofgem would note that, the drafting of this paragraph makes it clear that the licensee can comply with paragraph 17 of Standard Special Condition A11 directly or indirectly by means of the joint governance arrangements. As such, a single summary of the UNC would be sufficient, but given that there will be more than one network code (i.e. multiple short form codes), the Joint Office can fulfil the obligation, but this would need to be fulfilled in respect of each code. As such, Ofgem does not believe that further clarification is needed in this regard.
- 1.177 In relation to the comment as to whether summaries of documents associated with the UNC should also be required, Ofgem would note that the reference to the UNC implicitly references the Transportation Principal Document, the Offtake Arrangements Document, the modification rules, and the transition document, and as such a summary of this suite of documents is required under the provisions of the licence.
- 1.178 With regards to the comments raised by Gemserv, Ofgem would make the following comments:
- ◆ in relation to the comment on the title of Standard Special Condition A12, Ofgem considers it appropriate to retain the title of "Joint Office" in respect of this condition to ensure clarity regarding the purpose of this condition. Although the condition does not expressly require the licensee to appoint a Joint Office, it is clear that this is the intention behind the condition. Furthermore, the term Joint Office is clearly understood by industry participants. As such, Ofgem does not propose any modifications in this regard;

- ◆ in relation to the proposal that the drafting of paragraph 1(a) should require the licence to “procure the operation of” as well as “operate”, Ofgem agrees that such clarification would be helpful, and such clarification will be proposed as part of the April section 23 consultation.
- ◆ in relation to the proposal that the joint governance arrangements condition should expressly require the arrangements to avoid undue discrimination or preference between relevant GTs and relevant shippers as well as between relevant GTs, Ofgem considers that this is unnecessary. Standard Special Condition A12 relates to NTS and DN-GTs performing certain functions jointly, hence the provision. Ofgem considers that wider discrimination issues are captured by provisions elsewhere in the licence, such as in Standard Special Condition A6 (Conduct of Transportation Business), including discrimination as between relevant GTs and relevant shippers. As such, Ofgem does not propose any modifications in this regard.

Standard Special Condition A14. Availability of Data Formats

Respondents’ views

NGT

1.179 NGT did not comment on Standard Special Condition A14 within its response.

Potential Purchasers

1.180 One potential purchaser noted that the drafting of paragraph 1(b) could mean that the licensee suffers potential double jeopardy as compliance is required with the Network Code, the Agency Services Agreement and the licence. This potential purchaser stated that this was unnecessary and should be removed.

Shippers/suppliers

1.181 One shipper/supplier stated that they supported the referencing of obligations under the Network Code and Agency Services Agreement.

Ofgem's proposals

- 1.182 Ofgem has considered the comments made by a potential purchaser with respect to compliance with Standard Special Condition A14. Ofgem considers that it is important that all obligations in relation to transfers of standard file formats are complied with. Furthermore, Ofgem notes that the Authority has no powers to enforce private arrangements of the licensee, and that Standard Special Condition A14 allows the Authority to take action through licence enforcement. Whether or not private action can be taken in relation to a breach of the Agency Services Agreement or the network code is a matter for the contracting parties. Furthermore, Ofgem would note that there are other instances within the licence where compliance is required with arrangements external to the licence, for example, in Standard Special Condition A4 (Charging – General) the licensee is required to comply with the joint governance arrangements. As such, Ofgem does not propose any modifications in this regard.

Standard Special Condition A15. Agency

Respondents' views

NGT

- 1.183 NGT did not comment on Standard Special Condition A15 within its response.

Potential Purchasers

- 1.184 One potential purchaser noted that paragraphs 1 and 3 of Standard Special Condition A15 overlap and say very similar things, and hence that the drafting could be simplified.
- 1.185 No other potential purchasers commented on Standard Special Condition A15 within their responses.

Shippers/suppliers

- 1.186 One shipper/supplier stated that Ofgem should be commended for the work they have done on this issue. This shipper/supplier stated that transparency of agency processes and the licence condition on common services and procedures would in their view provide vital safeguards to avoid inefficient fragmentation of the

arrangements. This shipper/supplier stated that they were particularly pleased with the proposed introduction of a licence condition for the scope of services and systems within the Agency to be set out in the UNC as many processes that will be run by xoserve have a critical impact on the quality of service shippers/suppliers can provide to customers. The respondent considered that this change provides an essential reference point against which shippers can put forward modifications to the UNC should they be dissatisfied with the services and systems provided by xoserve. This shipper/supplier noted that this change was particularly important in the context of the corporate governance arrangements that are being established for xoserve which ensure that this organisation is clearly run for the benefit of the transporters.

- 1.187 This shipper/supplier stated that they were also pleased that Ofgem had also recently approved Modification 730 proposed by E.ON UK, *“Extending established Network Code governance arrangements to relevant Transco documents”*. This shipper/supplier noted that this explicitly acknowledges the legitimate role of shippers as well as NTS and DN-GTs in governing procedural documents related to services and systems managed by Transco alongside the Network Code and was helpful to shippers who may wish to propose changes to the UNC to formalise governance of other code related procedural documents.
- 1.188 One shipper/supplier noted that the term “users” was not defined and had a specific meaning within the network code, which may cause confusion. This shipper/supplier suggested that, given the intention is that NTS and DN-GTs should meet the costs of the Agency throughout the remainder of the current price control period, “users” should either be defined to be NTS and DN-GTs or replaced with “gas transporters”.

Ofgem’s proposals

- 1.189 Ofgem has considered the comments made by a potential purchaser with respect to the drafting of paragraphs 1 and 3 of Standard Special Condition A15 (Agency). Ofgem would note that the aim of paragraph 1 is to set the basic requirement that the licensee shall enter into the Agency Services Agreement, the scope of which shall be within the UNC. The main purpose of paragraph 3 is to state the principles upon which the Agency and the Agency Services Agreement should be based. Whilst there is limited repetition (of the fact that the scope of the Agency should be within the UNC), the obligations within

paragraphs 1 and 3 are different, and, as such, Ofgem does not propose any modifications in this regard.

- 1.190 Ofgem has also considered the comments raised by a shipper/supplier in relation to the use of the term “users” without being defined may cause confusion. As such, Ofgem proposes to remove the phrase “between the users of the agency” from the drafting of Standard Special Condition A15 as part of the April section 23 consultation such that the detail of the cost allocation process is managed outside the licence, and can adapt to future changes in arrangements as appropriate.

Standard Special Condition A16. Independence of the independent market for balancing

Respondents’ views

NGT

- 1.191 NGT did not comment on Standard Special Condition A16 within its response.

Potential Purchasers

- 1.192 No potential purchasers commented on Standard Special Condition A16 within their responses.

Shippers/suppliers

- 1.193 One shipper/supplier welcomed the additional clarity provided by Ofgem’s latest proposals.

Ofgem’s proposals

- 1.194 Ofgem continues to consider that its proposals for Standard Special Condition A16 are appropriate and as such, no changes are proposed.

Standard Special Condition A19. Provision of Services for Persons who are of Pensionable Age or Disabled or Chronically Sick: Arrangements in Respect of Meters

Respondents' views

NGT

- 1.195 NGT did not comment on Standard Special Condition A19 within its response.

Potential Purchasers

- 1.196 No potential purchasers commented on Standard Special Condition A19 within their responses.

Shippers/suppliers

- 1.197 One shipper/supplier stated that Ofgem's proposals for Standard Special Condition A19 seemed sensible.

Ofgem's proposals

- 1.198 Ofgem continues to consider that its proposals for Standard Special Condition A19 are appropriate and as such, no changes are proposed.

Standard Special Condition A20. Provision of Services for Persons who are Blind or Deaf

Respondents' views

NGT

- 1.199 NGT did not comment on Standard Special Condition A20 within its response.

Potential Purchasers

- 1.200 No potential purchasers commented on Standard Special Condition A20 within their responses.

Shippers/suppliers

- 1.201 One shipper/supplier stated that Ofgem's proposals for Standard Special Condition A20 seemed sensible.

Ofgem's proposals

- 1.202 Ofgem continues to consider that its proposals for Standard Special Condition A20 are appropriate and as such, no changes are proposed.

Standard Special Condition A22. Arrangements in Respect of Powers of Entry

Respondents' views

NGT

- 1.203 NGT did not comment on Standard Special Condition A22 within its response.

Potential Purchasers

- 1.204 No potential purchasers commented on Standard Special Condition A22 within their responses.

Shippers/suppliers

- 1.205 One shipper/supplier stated that Ofgem's proposals for Standard Special Condition A22 seemed sensible.

Ofgem's proposals

- 1.206 Ofgem continues to consider that its proposals for Standard Special Condition A22 are appropriate and as such, no changes are proposed.

Standard Special Condition A22A. Authorisation of Officers

Respondents' views

NGT

- 1.207 NGT did not comment on Standard Special Condition A22A within its response.

Potential Purchasers

- 1.208 No potential purchasers commented on Standard Special Condition A22A within their responses.

Shippers/suppliers

- 1.209 One shipper/supplier stated that Ofgem's proposals for Standard Special Condition A22A seemed sensible.

Ofgem's proposals

- 1.210 Ofgem continues to consider that its proposals for Standard Special Condition A22A are appropriate and as such, no changes are proposed.

Standard Special Condition A22B. Exercise of Powers of Entry

Respondents' views

NGT

- 1.211 NGT did not comment on Standard Special Condition A22B within its response.

Potential Purchasers

- 1.212 No potential purchasers commented on Standard Special Condition A22B within their responses.

Shippers/suppliers

- 1.213 One shipper/supplier stated that Ofgem's proposals for Standard Special Condition A22B seemed sensible.

Ofgem's proposals

- 1.214 Ofgem continues to consider that its proposals for Standard Special Condition A22B are appropriate and as such, no changes are proposed.

Standard Special Condition A23. Complaint Handling Procedure

Respondents' views

NGT

- 1.215 NGT did not comment on Standard Special Condition A23 within its response.

Potential Purchasers

- 1.216 No potential purchasers commented on Standard Special Condition A23 within their responses.

Shippers/suppliers

- 1.217 One shipper/supplier stated that Ofgem's proposals for Standard Special Condition A23 seemed sensible.

Ofgem's proposals

- 1.218 Ofgem continues to consider that its proposals for Standard Special Condition A23 are appropriate and as such, no changes are proposed.

Standard Special Condition A24. Preparation, Review of and Compliance with Statements and Codes

Respondents' views

NGT

- 1.219 NGT did not comment on Standard Special Condition A24 within its response.

Potential Purchasers

- 1.220 No potential purchasers commented on Standard Special Condition A24 within their responses.

Shippers/suppliers

- 1.221 One shipper/supplier stated that Ofgem's proposals for Standard Special Condition A24 seemed sensible.

Ofgem's proposals

- 1.222 Ofgem continues to consider that its proposals for Standard Special Condition A24 are appropriate and as such, no changes are proposed.

Standard Special Condition A25. Record of and report on Performance

Respondents' views

NGT

- 1.223 NGT did not comment on Standard Special Condition A25 within its response.

Potential Purchasers

- 1.224 No potential purchasers commented on Standard Special Condition A25 within their responses.

Shippers/suppliers

- 1.225 One shipper/supplier stated that Ofgem's proposals for Standard Special Condition A25 seemed sensible.

Ofgem's proposals

- 1.226 Ofgem continues to consider that its proposals for Standard Special Condition A25 are appropriate and as such, no changes are proposed.

Standard Special Condition A26. Provision of Information to the Authority

Respondents' views

NGT

- 1.227 NGT did not comment on Standard Special Condition A26 within its response.

Potential Purchasers

- 1.228 No potential purchasers commented on Standard Special Condition A26 within their responses.

Shippers/suppliers

- 1.229 One shipper/supplier stated that Ofgem's proposals for Standard Special Condition A26 seemed sensible.

Ofgem's proposals

- 1.230 Ofgem continues to consider that its proposals for Standard Special Condition A26 are appropriate and as such, no changes are proposed.

Standard Special Condition A27. Disposal of Assets

Respondents' views

NGT

- 1.231 NGT did not comment on Standard Special Condition A27 within its response.

Potential Purchasers

- 1.232 No potential purchasers commented on Standard Special Condition A27 within their responses.

Shippers/suppliers

- 1.233 One shipper/supplier noted that Standard Special Condition A27 states that "the licensee shall not dispose of the relinquishment of operational control over any

transportation asset unless in accordance with this condition.” This shipper/supplier further noted that potential purchasers had expressed concerns about whether System Operation Management Service Agreements (SOMSAs) would fall into this category and whether the consent of Authority is required.

- 1.234 This shipper/supplier stated that they remained of the view that Transco’s current centralisation of DN systems operations together with the likely reluctance of some buyers to wish to take SOMSA activities in house will mean that SOMSA arrangements may persist for longer and may remain in place beyond the current price control. Furthermore, this respondent considered that the continued centralised management of DN system operation activities was desirable as it may reduce the motivation of new DN owners to seek to inefficiently fragment the arrangements.
- 1.235 This shipper/supplier stated that if licensees consider that they have to seek Authority consent to enter into SOMSAs, the Authority could, through consent conditions, force such licensees to take such activities in house, even though such a licensee may consider that it is more efficient to allow Transco to continue to manage these activities on their behalf.
- 1.236 Another shipper/supplier noted that in paragraph 2 of the DTI’s draft determinations on the treatment of independent systems, the average charges to customers connected to independent systems should be calculated on a DN basis rather than nationally, to avoid variation of charging for domestic customers within a DN. This shipper/supplier stated that, if this is not the case, then the charges levied in respect of these customers will not be comparable to the distribution charges faced by customers elsewhere in the same network. This shipper/supplier also noted that, in paragraph 3, the last sentence would be improved by referencing the average “wholesale” price of gas consisting principally of methane as supplied. This shipper/supplier requested confirmation that the costs of the activities related to the Statutory Undertakings are included within the cost base of xoserve.

Ofgem’s proposals

- 1.237 In Ofgem’s view the proposed SOMSA arrangements will amount to a relinquishment of operational control. As such, Transco has issued a request for consent to relinquishment of operational control on behalf of each of the IDN

companies, which are currently wholly owned subsidiaries of Transco, and the RDNs (for a limited period) under the terms of paragraph 2 of Standard Special Condition A27 from the date that this condition takes effect in their licences. Given that these DNs will only become subject to the obligations of Standard Special Condition A27 when the licences are transferred to the new subsidiary companies and the proposed modifications take effect, compliance with the two months' notice provision is not possible. The Authority acknowledges that such notice is not possible, and proposes (subject to considering the requests) to grant consents to these applications on the date that such applications for consent are received.

- 1.238 In its application for consent, Transco has stated that, as the SOMSAs are concerned with the operation of certain limited parts of the pipe-line systems within each DN, these parts of each DN do not constitute a significant part of the gas conveyance system in Great Britain. As such, Transco is of the opinion that the companies are not required to notify the Secretary of State pursuant to Standard Special Condition A27(5) of their GT licences which Transco anticipates will be applicable to them.
- 1.239 Ofgem notes the comments made on the DTI's Determinations on independent systems, but would note that these Determinations are not in draft form, and that these are issues for the DTI rather than for Ofgem. As such, Ofgem has forwarded these comments to the DTI for their attention. Ofgem can confirm that the costs of the activities related to the Determinations will be incurred within the cost base of the NTS and that the costs of performing the necessary calculations will not be passed on to customers, but rather will be borne by Transco as part of the costs of DN sales. Other costs incurred by the NTS in funding the Liquefied Petroleum Gas (LPG) subsidy and ensuring that charges are consistent with the GB average charge will not be recovered from customers until 1 April 2007 at the earliest.

Standard Special Condition A30. Regulatory Accounts

Respondents' views

NGT

- 1.240 NGT stated that in signalling that NGT could accept the new reporting requirements under Standard Special Condition A30 during discussions on the condition, it was always on the basis that the accounts falling due by 30 June 2005 would be reported on the existing basis and not in the new format. NGT stated that it could not report on the new format for the 2004/05 accounts by 30 June 2005 given the amount of work that would be involved to re-align their processes. NGT therefore requested that the old format reporting for 2004/5 accounts should prevail or a formal consent for a time extension until May 2006 for the 2004/5 accounts to be produced in the new format should be granted.

Potential Purchasers

- 1.241 No potential purchasers commented on Standard Special Condition A30 within their responses.

Shippers/suppliers

- 1.242 No shippers/suppliers commented on Standard Special Condition A30 within their responses.

Ofgem's proposals

- 1.243 Ofgem would note that the new licence drafting for Standard Special Condition A30 (Regulatory Accounts) will apply to each licensee from the date of hive-down onwards. As such, unless consent is granted to the contrary, each licensee will be expected to submit regulatory accounts for the financial year 2004/5 in accordance with the provisions of Standard Special Condition A30.
- 1.244 Ofgem notes the issues of practicality raised by Transco with regards to compliance with such an obligation in year 1, and is therefore minded to grant a transitional consent in this regard that exempts Transco from compliance with the requirements of the new regulatory accounts condition with respect to the preparation of 2004/5 accounts. Instead, Transco will be permitted to prepare its

regulatory accounts for 2004/5 using the format used historically, as set out in the provisions of Amended Standard Condition 30.

Standard Special Condition A31. Supply Point Information Service

Respondents' views

NGT

- 1.245 NGT did not comment on Standard Special Condition A31 within its response.

Potential Purchasers

- 1.246 No potential purchasers commented on Standard Special Condition A31 within their responses.

Shippers/suppliers

- 1.247 One shipper/supplier welcomed the latest changes proposed by Ofgem with regard to obligations that should be made through the Agency, stating that these changes will help protect against the risk of both degradation of data quality and inadvertent fragmentation of the arrangements.

Ofgem's proposals

- 1.248 Ofgem continues to consider that its proposals for Standard Special Condition A31 are appropriate and as such, no changes are proposed.

Standard Special Condition A33. Restriction on Use of Certain Information and Independence of the Transportation Business

Respondents' views

NGT

- 1.249 NGT did not comment on Standard Special Condition A33 within its response.

Potential Purchasers

- 1.250 One potential purchaser stated that they were disappointed by Ofgem's recent policy decision to introduce a "best endeavours" obligation in respect of the business separation licence condition. This potential purchaser noted that until very recently, the proposed obligation reflected the "reasonable endeavours" obligation associated with the equivalent electricity distribution licence condition. This potential purchaser therefore stated that they saw no reason why the regime should be changed for gas, following the sale of the DNPs.
- 1.251 No other potential purchasers commented on Standard Special Condition A33 within their responses.

Shippers/suppliers

- 1.252 One shipper/supplier stated that, given the arrangements proposed are similar to those to be found for electricity networks businesses, they were broadly supportive of the proposed arrangements for internal separation. Nevertheless this shipper/supplier also noted that the shift to a "best endeavours" from a "reasonable measures" obligation was inconsistent with the electricity distribution licences and seemed unduly onerous and could simply add to unnecessary costs without providing additional benefits. This respondent further noted that it was the practical internal separation measures together with actions to assure compliance that were important.
- 1.253 One shipper/supplier stated that they did not believe that the current drafting of Standard Special Condition A33 was sufficiently extensive to cover prevention of access to confidential information by any related generation businesses in the same group of companies. This shipper/supplier noted that this principle would need to flow throughout the condition via a number of paragraphs, for example 6(c) and associated sub-paragraphs.

Ofgem's proposals

- 1.254 Ofgem notes the comments raised by a potential purchaser and a shipper/supplier with respect to the "best endeavours" obligation within the proposed drafting. However, Ofgem remains of the view that a "best endeavours" obligation is appropriate and therefore does not propose to make any modifications in this regard. As set out in the February document, Ofgem

amended the reasonable endeavours obligation proposed in respect of compliance with Transco's monopoly to monopoly business separation statements to one of best endeavours in response to comments raised by potential purchasers. Ofgem considered that it would be inconsistent to have a best endeavours obligation in respect of compliance with a monopoly to monopoly business separation statement and a reasonable endeavours obligation in respect of monopoly to competitive statement (where the potential for harm resulting from non-compliance with the statement is, if anything, greater). As compliance with the business separation statements is so important, Ofgem considers that the best endeavours obligation should be introduced and that the benefit that will result from this justifies the divergence from the related obligations in electricity.

- 1.255 Ofgem has also considered the comments made by a shipper/supplier with respect to the inclusion of electricity generation within the drafting of Standard Special Condition A33. Whilst electricity generation is mentioned in paragraph 3 of this condition, Ofgem acknowledges that this condition could be further clarified by adding further references to electricity generation within other paragraphs as appropriate. Ofgem proposes to implement such changes as part of the April section 23 consultation.

Standard Special Condition A34. Appointment of Compliance Officer

Respondents' views

NGT

- 1.256 NGT did not comment on Standard Special Condition A34 within its response.

Potential Purchasers

- 1.257 No potential purchasers commented on Standard Special Condition A34 within their responses.

Shippers/suppliers

- 1.258 One shipper/supplier noted that the compliance officer provisions were linked specifically to Standard Special Conditions A33 and A35 and it was not clear

whether this can be the same individual as the one required under Special Condition C21, although this was made clear in the “C” conditions.

- 1.259 This shipper/supplier also noted that a new and complex regime was being implemented, which would necessitate behavioural changes among staff at the DNs, and that, as such, the report provided to the Authority under paragraph 8 of this condition should be subject to independent audit, and accompanied by a formal audit opinion. This shipper/supplier stated that the additional assurance provided by such an audit would be of value both to the Authority and the wider community providing confidence in the robust nature of the new regime, and that consideration could be given at the next price control review as to whether the activity was necessary on an ongoing basis.

Ofgem’s proposals

- 1.260 Ofgem confirms that, as stated in paragraph 1 of Special Condition C21, the compliance officer for this Special Condition can be the same as the compliance officer for Standard Special Condition A34. In Ofgem’s view, this is sufficiently clear, and to reference an NTS Special Condition within a Standard Special Condition that applies to all NTS and DN-GTs would only cause confusion.
- 1.261 In relation to the comments made by the same shipper/supplier regarding whether the business separation compliance statement submitted under the terms of Standard Special Condition A34 should be subject to an audit, Ofgem would note that the provisions of Standard Special Condition A34 have been drafted to be consistent with the equivalent provisions within the electricity DNO licences. Ofgem would note that there are specific instances where an audit is required in relation to business separation compliance statements but that, in these specific cases, the introduction of such a provision is generally associated with intervention by an external body such as the OFT and / or possession of a dominant position within their relevant market by the party concerned.

Standard Special Condition A36. Restriction on Activity and Financial Ring Fencing

Respondents' views

NGT

- 1.262 NGT did not comment on Standard Special Condition A36 within its response.

Potential Purchasers

- 1.263 No potential purchasers commented on Standard Special Condition A36 within their responses.

Shippers/suppliers

- 1.264 One shipper/supplier stated that nothing in the licence conditions should preclude or discourage the extension of SOMSAs beyond the end of the current price control and noted that it was not clear that the new DN owners would wish eventually to take all DN system operation activities covered by SOMSAs in house.

Ofgem's proposals

- 1.265 Ofgem continues to consider that its proposals for Standard Special Condition A36 are appropriate and, as such, no changes are proposed. Ofgem is proposing to grant consent to the exclusion of the SOMSAs (and certain other agreements) under paragraph 3(d) of Standard Special Condition A36 until 31 March 2007 in the case of the NTS operator and until 31 March 2008 in the case of the DN operators. Ofgem will then consider the appropriate treatment of these activities at the next price control should such arrangements endure.

Standard Special Condition A38. Credit Rating of the Licensee

Respondents' views

NGT

- 1.266 NGT did not comment on Standard Special Condition A38 within its response.

Potential Purchasers

- 1.267 One potential purchaser provided comments on the drafting of Standard Special Condition A38.
- 1.268 This potential purchaser stated that the revised drafting has the effect of excluding all rating categories other than an issuer credit rating and that as a consequence, they believed that all Standard & Poor's ratings were therefore excluded.
- 1.269 This potential purchaser noted that they had been advised by Ofgem that a Moody's senior implied rating would be acceptable. However, they questioned why, if this is the case, such a rating should be excluded on the face of the licence condition. This potential purchaser stated that it would be better to make the acceptability of such a credit rating explicit within the licence drafting rather than issuing an exemption or derogation letter in this regard. This potential purchaser also stated that it would be helpful for the condition to leave some flexibility for any future rating category that is issued and that would satisfy Ofgem's requirements.
- 1.270 This potential purchaser accepted the need for alignment between the gas and electricity distribution licences, in general. However, they stated that such alignment is not appropriate in this area and that it would be inappropriate regulatory practice to propose a revised condition, with an effect not intended, and then to offer exemption from it.
- 1.271 This potential purchaser offered two potential solutions to address their concerns:
- ◆ to delete the word "issuer" from the phrase "issuer credit rating"; or
 - ◆ to avoid the "sunset" provision in proposed Special Condition E11 and use the power in paragraph 2 of that condition to permit it to continue in being after the transfer of ownership. This would specifically provide for Ofgem to be able to accept Moody's senior implied rating and any other rating category that other agencies issue in the future with the intent of mirroring a senior implied rating, although it would not be specific about such ratings on the face of the licence.

- 1.272 No other potential purchasers commented on Standard Special Condition A33 within their responses.

Shippers/suppliers

- 1.273 No shippers/suppliers commented on standard Special Condition A38 within their responses.

Ofgem's proposals

- 1.274 Following consideration of the views expressed by a potential purchaser, Ofgem notes that contrary to the statement made by this potential purchaser, Standard & Poor's **does** assign "issuer credit ratings", with such an opinion stated to be a "current opinion of an obligor's overall financial capacity (its creditworthiness) to pay its financial obligations". As such no modifications are required in this regard.
- 1.275 In relation to the other comments raised by this potential purchaser, Ofgem would note that, in the case of whole-of-business securitisation structures, a Moody's "senior implied" credit rating can be considered to be equivalent to an "issuer" rating and that accordingly, Ofgem would be prepared to accept holding of such a rating as consistent with the requirements of Standard Special Condition A38 (Credit Rating of the Licensee).
- 1.276 Ofgem agrees that the concerns raised by this potential purchaser could be addressed through modifications to Standard Special Condition A38 (Credit Rating of the Licensee) but would also note that it may be appropriate for Ofgem to retain the flexibility to consider the merits of each case on an individual basis and only to grant eligibility where Ofgem is satisfied that this is appropriate given the financial structure of the licensee concerned. Ofgem therefore proposes to consider licence modifications to Standard Special Condition A38 (Credit Rating of the Licensee) as part of the April section 23 consultation such that the concerns expressed by this potential purchaser can be addressed whilst retaining Ofgem flexibility to assess the merits of each new case individually.

Standard Special Condition A40. Price Control Review Information

Respondents' views

NGT

- 1.277 NGT did not comment on Standard Special Condition A40 within its response.

Potential Purchasers

- 1.278 One potential purchaser provided comments on the drafting of Standard Special Condition A40. This potential purchaser expressed disappointment that Ofgem had continued to progress the introduction of a new licence obligation in respect of price control review information. This potential purchaser recognised that this condition replicated recent proposals for the modification of the electricity distribution licence, but stated that this condition was not required for the DN sales process and that its introduction would be more appropriately considered at the time of the next DN price control review.
- 1.279 No other potential purchasers commented on Standard Special Condition A40 within their responses.

Shippers/suppliers

- 1.280 One shipper/supplier stated that Ofgem's proposals seemed reasonable.
- 1.281 Another shipper/supplier noted that, in respect of the audit provision, it would be helpful to clarify if it is the regulator who appoints/rotates the auditors. Furthermore, in paragraph 9 of Part D of this condition, this shipper/supplier stated that it would be helpful to build in a requirement for consultation of all interested parties rather than just the GTs.

Ofgem's proposals

- 1.282 Ofgem notes the comments made by a potential purchaser, but would however, restate the position outlined in the February document that the early, accurate and timely provision of information will be key to capturing the benefits for customers of the DN sales transaction. As such, it is Ofgem's view that the

introduction of Standard Special Condition A40 (Price Control Review Information) is linked to DN sales, and should become operative before the next price control review.

- 1.283 In relation to the comments raised by a shipper/supplier, Ofgem would note that it is not for Ofgem or the Authority to appoint the auditors of the licensee's regulatory accounts. However, consistent with the provision of paragraph 5 of Part C of this condition, the Authority may, in addition to any audit of the regulatory accounts, review, or arrange for a person nominated by the Authority ("a reviewer") to review matters in the price control information in respect of which the Authority requires clarification.
- 1.284 In paragraph 9 of Part D of this condition, Ofgem would note that the Authority is required to give notice to all NTS and DN-GTs before issuing the price control review reporting rules and consider any representations or objections which are duly made and not withdrawn. Whilst the condition does not state that gas shippers must be consulted by the Authority, Ofgem adopted a consultative approach to the introduction of the equivalent price control reporting rules in electricity distribution. Therefore, whilst Ofgem does not propose a change to Standard Special Condition A40 in this regard, it would note that it anticipates that all interested parties would be given the opportunity to submit views for consideration at the appropriate time.

Standard Special Condition A41. Emergency Services to or on Behalf of Another Gas Transporter

Respondents' views

NGT

- 1.285 NGT did not comment on Standard Special Condition A41 within its response.

Potential Purchasers

- 1.286 No potential purchasers commented on Standard Special Condition A41 within their responses.

Shippers/suppliers

- 1.287 One shipper/supplier urged Ofgem to look again at this condition, stating that they remained concerned that a satisfactory solution to ensuring the medium term continuation of the first response services to Independent Gas Transporters (IGTs) has yet to be found. This respondent stated that it would seem appropriate, if only as an interim measure to the end of the current price control, to apply licence conditions to oblige relevant transporters to both “make safe” and carry out “repair and restoration” and that they did not consider that it was prudent to rely on the 6 month extension to Transco’s current contracts with IGTs, as any Ofgem review on the theoretical contestability of these services and any consequential licence changes would almost certainly take longer than this.

Other respondents

- 1.288 The HSE noted Ofgem’s commitment to reviewing the arrangements regarding the first response emergency services to IGTs. The HSE noted that the current extended agreements between IGTs and Transco will expire by 1 April 2006 and new arrangements will need to be implemented before then, as outlined in the February document. The HSE agreed that the arrangements should be applicable to all NTS and DN-GTs and be placed in Standard Special Condition A41 (Emergency Services to or on Behalf of Another Gas Transporter) at the appropriate time.

Ofgem’s proposals

- 1.289 Ofgem welcomes the HSE’s response on the drafting of this condition.
- 1.290 Ofgem also notes the concerns expressed by a shipper/supplier in relation to this condition. However, it remains Ofgem’s intention to consult on the arrangements for emergency response to other GTs such that such consultation has concluded before the present, extended, arrangements expire in April 2006. Ofgem expects to release this consultation later this quarter (i.e. second quarter 2005). As a result, Ofgem does not propose any modifications in this regard.

Standard Special Condition A43. Provision of Metering and Meter Reading Services

Respondents' views

NGT

- 1.291 NGT did not comment on Standard Special Condition A43 within its response.

Potential Purchasers

- 1.292 No potential purchasers commented on Standard Special Condition A43 within their responses.

Shippers/suppliers

- 1.293 One shipper/supplier stated that they had no comments on the drafting. Nevertheless this respondent noted that being forced to deal with a multitude of meter service providers would add to the costs of shippers/suppliers.

Ofgem's proposals

- 1.294 Ofgem notes the comments raised by a shipper/supplier in relation to the metering related costs of DN sales. Ofgem would note that all shippers/suppliers were surveyed on the costs that they would bear as a result of DN sales as part of Ofgem's Final Impact Assessment. As such, whilst Ofgem recognises that shippers/suppliers will incur costs as a result of DN sales, these costs should, in Ofgem's assessment, be outweighed by the potential benefits to customers, and therefore Ofgem does not propose to make any modifications to this condition.

Standard Special Condition A48. Last Resort Supply: Payment Claims

Respondents' views

NGT

- 1.295 NGT did not comment on Standard Special Condition A48 within its response.

Potential Purchasers

- 1.296 No potential purchasers commented on Standard Special Condition A48 within their responses.

Shippers/suppliers

- 1.297 One shipper/supplier stated that the proposal to coordinate the levying of charges to cover supplier of last resort claims through the agent was to be welcomed.
- 1.298 Another shipper/supplier stated that they understood that the drafting replicated the existing condition, that they were of the view that clarity could be improved such that paragraph “number 2” and “The following provisions apply” are removed so the sentence starts with: “Where the licensee receives from a claimant a valid claim for a last resort supply payment, the licensee shall (i) During the relevant year....specified amount (ii) During, or as soon as practicable....specified amount.”

Ofgem’s proposals

- 1.299 Ofgem notes the clarification suggested by a shipper/supplier, but would state that such a modification is not necessary or related to DN sales and, as such, no changes are proposed.

Standard Special Condition A49. Designated Registrar of Pipes

Respondents’ views

NGT

- 1.300 NGT did not comment on Standard Special Condition A49 within its response.

Potential Purchasers

- 1.301 One potential purchaser noted that in paragraph 4, the cross references to Standard Special Condition A50 should be to Standard Special Condition A51.
- 1.302 No other potential purchasers commented on Standard Special Condition A49 within their responses.

Shippers/suppliers

- 1.303 One shipper/supplier noted a cross-reference error in paragraph 4(c).
- 1.304 Another shipper/supplier stated that the suggested changes seemed reasonable, and noted that if the Authority were to make any directions with respect to this condition it would seem reasonable to have a single body that manages this (e.g. the Agency).

Ofgem's proposals

- 1.305 Ofgem notes the comment made by the potential purchaser and shipper/supplier in relation to the cross-references within paragraph 4 and has corrected these as part of the accompanying section 8AA and section 23 directions. This is highlighted in the table provided in Schedule 2 and the licence drafting provided in Schedule 3.
- 1.306 Later this year Ofgem will consult separately on whether to make any directions in relation to this condition.

Standard Special Condition A50. System Development Obligations

Respondents' views

NGT

- 1.307 NGT did not comment on Standard Special Condition A50 within its response.

Potential Purchasers

- 1.308 One potential purchaser noted that there should be a paragraph break in paragraph 8 (iii) so that point (iv) starts as a new sub-paragraph.
- 1.309 No other potential purchasers commented on Standard Special Condition A50 within their responses.

Shippers/suppliers

- 1.310 One shipper/supplier stated that, in paragraph 10(b), the sub-paragraph should break after “premises” in the second line as the words that follow relate to both sub-paragraphs (a) and (b).

Ofgem’s proposals

- 1.311 Ofgem notes the comment made by the potential purchaser in relation to the formatting of paragraph 8 and has corrected this as part of the accompanying section 8AA and section 23 directions.
- 1.312 Furthermore, Ofgem notes the comment made by the shipper/supplier in relation to the formatting of paragraph 10(b) and has corrected this as part of the accompanying section 8AA and section 23 directions.
- 1.313 This is highlighted in the table provided in Schedule 2 and the licence drafting provided in Schedule 3.

Standard Special Condition A55. Enduring Offtake Arrangements

Respondents’ views

NGT

- 1.314 NGT did not comment on Standard Special Condition A55 within its response.

Potential Purchasers

- 1.315 No potential purchasers commented on Standard Special Condition A55 within their responses.

Shippers/suppliers

- 1.316 Nine shippers/suppliers stated their opposition to Standard Special Condition A55. One of these shippers/suppliers stated that they did not agree that the introduction of this condition protected the interests of customers and another shipper/supplier agreed with this respondent given the impact of these proposals on industrial customers and generators.

1.317 Specific comments made by shippers/suppliers have been structured under the following headings:

- ◆ achievability of timescales;
- ◆ process; and
- ◆ nature of reform.

Achievability of timescales

1.318 One shipper/supplier noted that it was not practical to introduce enduring offtake arrangements by 1 September 2005. One shipper/supplier agreed with this view and stated that the timescale was too tight to allow any certainty in respect of a robust solution and a successful implementation. This shipper/supplier noted that exit reform was a complex process and that shippers would need time to renegotiate contract terms and conditions with their NTS direct connect customers, and that such negotiations could be extremely complex.

1.319 Another shipper/supplier stated that they did not believe that it was correct for a best endeavours obligation to be placed on NGT and DN purchasers to introduce such arrangements by September 2005. This respondent stated that this would place inordinate pressure on the industry and in particular shippers and their customers to both debate the detail of the changes, and draw up any contractual changes needed to ensure that parties can participate in the new arrangements. This shipper/supplier also stated that they would expect a comprehensive Impact Assessment to be carried out once the detail of the proposed arrangements had been agreed.

1.320 One shipper/supplier noted that, at present, there were extensive and detailed legal agreements in place in relation to the Moffat interconnector. This respondent stated that the cost and time implications of altering these legal agreements would be considerable. This respondent also stated that to alter the sale and purchase contracts between Irish and UK counter-parties would have cost and time implications.

1.321 Another shipper/supplier stated that imposing an extremely challenging implementation date did not allow for alternative arrangements to be brought

forward and fully considered by the industry and did not demonstrate a commitment by Ofgem to decision-making based on sound analysis.

- 1.322 Another shipper/supplier noted that, given timescales, shippers would not be able to consider a modification based on a complete understanding of the whole picture. Furthermore, this shipper/supplier stated that, in order to be in a position to undertake auctions in September/October, Transco would presumably have to start system development imminently, if they had not already done so, and therefore that shippers would have no opportunity to influence this.
- 1.323 This shipper/supplier noted that, in their opinion, it would be fairly straightforward to introduce rules that allowed for any initial unconstrained auctions to be delayed beyond September and noted that they had suggested this in their response to Ofgem's Final IA. This shipper/supplier further noted that to introduce a best endeavours licence condition that forced Transco to introduce auctions to an unrealistic timetable would be counter productive, as it would mean that shippers and DN operators would be less likely to participate or bid long term in such auctions as they would not have had time to be able to evaluate all the risks, opportunities and issues associated with them.
- 1.324 Further concerns over timescales were raised by the AEP, and these are summarised under the views of "other respondents" below.

Process

- 1.325 One shipper/supplier considered that the use of "conditional" licence conditions requiring licensees to bring forward proposals to industry codes to be entirely inappropriate and ultimately prejudicial to Authority decisions on such proposals. This shipper/supplier stated that the UNC modification procedures are designed to allow users, and in some cases customer group representatives, to bring forward voluntarily proposals to deal with issues as they arise and that parties should not be "forced" to bring forward proposals through licence conditions, especially where it is third parties rather than the licensees that are most affected by such proposals. This shipper/supplier noted that if any user believes the day 1 interim offtake arrangements are unsatisfactory they would not hesitate to propose a change.

- 1.326 This shipper/supplier raised particular concern that conditional licence conditions make it impossible for NTS and DN-GTs to vote against recommending not to implement any UNC modification to introduce the enduring offtake arrangements, which in itself undermines the validity of any Panel recommendation and, should appeals to Authority modification decisions be allowed only where such decisions are contrary to Panel recommendations, it could prejudice parties' rights of appeal. Another shipper/supplier stated that introducing a standard special condition into the NTS and DN GT licence circumvented the usual development and consultation process of Network Code change that has to date delivered timely and, for the most part consensual, change to industry arrangements.
- 1.327 Another shipper/supplier noted that, as a consequence of this condition, Transco had already stated publicly that they intended to bring forward an exit modification proposal in May such that changes can be made to the network code in sufficient time to allow auctions to be held in September/October. This shipper/supplier noted that this was likely to pre-empt any determination of what the initial levels of baseline capacity and flow flexibility would be and what prices would be likely to apply to these products. This shipper/supplier further stated that, given the considerable input that Ofgem had had in defining and shaping Transco's current thoughts on exit reform, introducing such a licence condition would fetter Ofgem's discretion in deciding whether to approve Transco's modification proposal against the UNC relevant objectives.
- 1.328 Two shippers/suppliers noted that Ofgem had committed to delivering "high quality decision-making based on sound, well-researched analysis"¹¹, but argued that the current proposals for the enduring offtake arrangements represented a fundamental change to the purchase of Exit Capacity and introduced risk and uncertainty for shippers and that the proposals in their current form were outside of the scope of both the financial analysis and the RIAs undertaken to assess the benefits to be derived from the sale of some of Transco's DNs. This view was supported by a further shipper/supplier.
- 1.329 One shipper/supplier noted that Ofgem had not sought the views of shippers, interconnector operators, storage operators or connected countries, and as such,

¹¹ Ofgem's corporate strategy and plan 2005 – 2010.
Office of Gas and Electricity Markets

its previous impact assessments were insufficient. This was supported by a further shipper/supplier who noted that the impact upon competition in Ireland, Northern Ireland and the Isle of Man had not been quantified. This shipper/supplier noted that failure to perform a full and detailed impact assessment would be a complete disregard for due process and a failure on the part of Transco to fulfil its best endeavours obligation. This respondent also considered that a failure to consult with a wider audience including parties outside the UK would also be inconsistent with this obligation.

- 1.330 Another shipper/supplier noted that the Authority “does not accept that the majority of costs will arise from the offtake arrangements” but questioned whether the Authority had a complete view of the costs, not only for shippers, but for customers, generators, storage operators and interconnector users, and whether it had fully taken account of the commercial relationships between these participants and how costs are absorbed or, more importantly, passed through in the gas industry chain.
- 1.331 Two shippers/suppliers stated that the Authority’s reasons for implementation, as set out in their February decision document, seemed to be incomplete and insufficient, therefore whilst they had no opposition to the sale, they considered that the licence change issues warranted serious re-consideration. These shippers/suppliers suggested that those licence conditions which were essential to the DN sales project should be implemented but the remainder be subject to a full review and potentially re-consultation to follow due process correctly.
- 1.332 One shipper/supplier stated that using licence conditions of one sector of the industry (GTs) to impose change on the rest of the industry (shippers, suppliers, consumers, etc) was not consistent with the Authority’s obligations on best regulatory practice. This shipper/supplier further stated that it appeared that Ofgem wished to use the DN sales process to introduce changes which it had proposed before and been unable to implement and that this was inappropriate.
- 1.333 This shipper/supplier also noted that Ofgem’s IAs to date on offtake were inconsistent with the guidance issued by both Ofgem and the Cabinet Office. This shipper/supplier stated that Ofgem needed to take into full account the impact on NTS industrial customers, and noted that the proposals would have serious negative impacts on the Irish gas market, but that it was only after the Authority published its decision document that the Irish shipping market was

made aware of the proposals (by NGT). This shipper/supplier also noted that, for the Authority to be able to demonstrate that it has fulfilled its own duties to take into consideration the impact of its proposals for security of supply, it would also need to address fully the impact on storage operations and the consequences for generators. As such, this shipper/supplier stated that, if the Authority remained convinced that it could implement the proposed licence changes, it would need to ensure that Ofgem carried out a full IA on any modification proposal which is raised by the NTS and DN-GTs to meet their licence requirements. This shipper/supplier further stated that, to ensure the IA is robust while meeting the Authority's objective of not unnecessarily placing burdens on the industry, it would be necessary to delay the date of implementation.

- 1.334 This shipper/supplier noted that the Gas Forum had commissioned consultants to do an independent assessment of the costs. The respondent suggested that the Authority would need to take this into account at the appropriate time in addition to Ofgem's own IA.

Nature of proposals

- 1.335 One shipper/supplier stated that they continued to have significant reservations about the introduction of the type of reform to the NTS exit arrangements that has been proposed to date by Ofgem. Another shipper/supplier noted that there remained widespread opposition to Ofgem's proposed enduring offtake arrangements from shippers, consumers and, according to this shipper/supplier, transporters, which was clearly articulated in responses to the Final IA.
- 1.336 One shipper/supplier stated that they understood that Ofgem made exit reform a gateway to allowing Transco to proceed with the DN sales process, but that they did not believe that in formulating its proposals Transco has taken appropriate measures to (i) reflect the nature of industry demand for change (ii) be as cost efficient as possible (iii) be practicable in their operation for all exit points or (iv) provide sufficient lead time for shippers to consult with their affected customers and take advice as to the relevant contractual changes that would be required or which may be appropriate. This shipper/supplier therefore stated that the proposed introduction of a best endeavours obligation to implement the proposed enduring offtake arrangements by 1 September 2005 was disappointing.

- 1.337 One shipper/supplier acknowledged that the sale of the distribution networks by NGT would require some necessary change, primarily due to the new commercial relationship between the NTS and the DNs, but this respondent stated that they did not consider all the proposed changes to be either suitable or entirely necessary. This shipper/supplier continued to maintain that the arrangements for the provision of flow flexibility capacity should not apply to direct connect users of the NTS (such as end users, storage, and interconnectors) and that they should be exempt from these arrangements as it is appropriate to treat these offtakes as different from those of DNs under entirely different commercial incentives.
- 1.338 Another shipper/supplier drew comparisons with the operation of the entry regime, noting that the results currently published for entry auctions on Transco's website are difficult to decipher, and expressing concern should the results of exit capacity auctions be presented in a similar way to entry as it would be impossible for shippers/DN operators to obtain a complete picture of the results of the auction and any impact this may have with regard to re-allocation of capacity/flow flexibility by Transco.
- 1.339 One shipper/supplier stated that, in their view, the proposed exit reform was not required for DN sales and only has a negative commercial and operational impact, primarily on end users (industrial customers and generators). This shipper/supplier stated that the proposed exit regime would have a negative impact on the gas market in Ireland, and would have the same effect on Ireland, Northern Ireland and the Isle of Man as other European states' openness is perceived to have on the GB gas market.
- 1.340 This shipper/supplier further stated their opinion that industrial customers and generators would carry the operational and price risk in the proposed new regime, given that many bilateral contracts with large customers treat transportation on a pass-through basis. This shipper/supplier further assumed that new entrant connections would either be new power stations or industrial load customers generating competition for capacity rights between consumers and acting as a deterrent to new entrants in the Irish energy market, due to the uncertainty and additional risks involved. This shipper/supplier noted that this would hinder the opening up of the Irish energy market as directed by the EU.

- 1.341 Another shipper stated that they objected very strongly to the proposed exit reforms (as did all shippers/suppliers both upstream and downstream of the Moffat interconnector) as these proposals would have a negative financial impact. This shipper/supplier stated that they failed to understand the concerns that the exit reforms were endeavouring to address and did not believe these concerns to be of a significant nature on the majority of occasions. This shipper/supplier stated that the issue of constrained NTS flexibility should be dealt with by a similar mechanism as NTS emergencies and that the best endeavours obligation required Transco to consider this least impact and more suitable alternative.
- 1.342 One shipper/supplier made a number of more detailed comments on the proposed offtake arrangements and the reasons provided in the February decision document issued by the Authority with regards to the consent under Amended Standard Condition 29 to the disposal of the four IDNs¹². To this end, the shipper/supplier:
- ◆ assumed that the Authority was aware that no evidence in respect of cross-subsidies had been provided and would confirm that this was not the basis of its February decision;
 - ◆ expressed surprise that the Authority had decided that the comments made in relation to the Financial Services Authority (FSA) were not relevant. This shipper/supplier noted that energy only contracts tend to have transportation costs as a pass-through element, and therefore if an NTS customer's shipper/supplier has not booked capacity long term, the price risk rests with customers, and as such, for the auctions, the customer will need to consider how to trade off this risk, and the shipper/supplier cannot advise customers on how to trade off this risk due to FSA regulations. Furthermore, it was noted that it would be costly for customers and shippers to develop the necessary contracts and that they could not understand why the Authority had not taken account of this;

¹² 21/05 - National Grid Transco – Sale of gas distribution networks. Authority decision. Transco plc applications to dispose of four gas distribution networks

- ◆ suggested that the Authority had not taken sufficient account of the contractual and commercial differences between entry and exit. This shipper/supplier noted that a shipper will have a long term contract to buy gas at the beach or be an affiliate of a producer and base its bidding strategy on these long term agreements. This shipper/supplier noted that there was no equivalent for industrial customers that purchase gas on one or two year contracts (or even shorter). As such, experience in booking entry capacity will not be applicable to exit; and
- ◆ questioned what the Authority meant by “new entrants”: new shippers or new offtakes (customers/generators)? If the former, this shipper/supplier stated that they could not see how the capacity booking model could have any impact on a new entrant shipper. If the latter, this shipper/supplier stated that the Authority did not have the vires to promote competition between gas consumers for access to the network. This shipper/supplier also questioned the Authority’s vires with respect to promoting competition between shippers and DN’s for exit capacity rights.

1.343 Given the above concerns about potentially prejudicing the modifications decision making process, questions as to the merits of the enduring offtake proposals and the implementation date, one shipper/supplier urged the Authority to rethink its support for this new licence condition.

Other respondents

1.344 The AEP stated that it did not support the introduction of this licence condition as it considered it unduly onerous on the NTS, DN-GTs and the rest of the industry to be forced to work to such tight timescales over such important issues. More importantly the AEP stated that it considered this to be completely unnecessary as the reforms are not in customers’ best interests; impacting on competition in supply and in the longer term security of supply.

1.345 The AEP noted that Ofgem considered this licence condition necessary to ensure the enduring offtake arrangements are implemented and stated that if such wholesale reform to the NTS exit capacity arrangements is required for network owners to comply with their licence conditions concerning non-discrimination, facilitating competition and economic and efficient operation then they should

be willing to bring forward such proposals in the absence of this licence condition. As a result, the AEP stated that this licence condition was unnecessary and should be removed.

1.346 The AEP stated that if Ofgem maintains its view that these reforms are necessary and this licence condition is required, it should consider if this type of regulatory intervention is consistent with the principles of better regulation to which Ofgem claims to be committed and fully contemplate why there is so much opposition to the proposals from all sectors of the industry. The AEP suggested that all aspects of the proposals should be subject to a full stand alone IA as many elements of the reforms were not well defined nor were their implications fully understood at the time of the Final IA for the DN sales as issued in November 2004.

1.347 The AEP also flagged concerns over the timescale, stating that September 2005 was now less than five months away and yet considerable uncertainty persists over many key issues including baselines and prices. The AEP noted that this uncertainty would not be reduced until the licence, charging methodology and modification(s) are approved. The AEP further noted that when long term auctions were introduced at entry, the modification was approved and licence conditions finalised three and a half months before the auctions took place. The AEP considered that at exit, more time would be needed, as there is an extra link in the supply chain. The AEP stated that customers that are directly connected to the NTS would need to contract with shippers to ensure that their long term capacity and flow flexibility needs were secured, and that this may require a new form of contract to be negotiated and drafted, since long term liabilities would be created that may extend beyond the current gas supply contract. The AEP therefore suggested that a period of at least six months should be allowed between finalisation of all the UNC and licence changes and the first long term auctions.

Ofgem's proposals

1.348 Comments made by respondents are considered below under the following headings:

- ◆ achievability of timescales;

- ◆ process; and
- ◆ nature of proposals.

Achievability of timescales

- 1.349 Ofgem notes the concerns raised by respondents with regards to the achievability of the 1 September 2005 deadline and recognises that there is a large amount of work to do in relation to the implementation of the enduring offtake arrangements. However, Ofgem would note that the implementation of these arrangements has already been delayed (as part of the Authority's February 2005 decision) in view of the concerns expressed by respondents to Ofgem's Final IA. This delay has allowed industry participants additional time for consultation on the detailed development of the arrangements.
- 1.350 Ofgem would note that the date of September 2005 was chosen on the basis of information from Transco that the planning lead-times for NTS investment are three years. If September 2005 is not achieved then there is a risk that any investment required from October 2008 may not be signalled in sufficient time given the three year investment lead times for the NTS. As such, Ofgem continues to consider that a delay beyond September 2005 would be against the interests of customers in a divested industry structure and increase the potential for customers to incur costs as a result of inefficient investment or system operation decisions. Therefore, Ofgem considers that the current deadline is necessary to protect the interests of customers.
- 1.351 Ofgem notes the concern raised by the AEP in relation to the certainty of baselines and prices. Ofgem would, however, note that Transco has commenced consulting upon aspects of the enduring offtake arrangements including conducting meetings of the Exit Reform Forum and issuing pricing discussion papers¹³. Further, Ofgem has already published its Initial Thoughts on the enduring offtake arrangements¹⁴ and proposes to issue two further consultations before September.

¹³ For example, Ofgem notes that Transco's PD18 pricing discussion paper "NTS Exit Flat Capacity Pricing" includes illustrative reserve prices for NTS exit flat capacity. In addition, Transco's pricing discussion paper PD20, "NTS Exit Flexible Capacity and Commodity Charges" contains an indicative average zonal price schedule for NTS exit flexible capacity.

¹⁴ *National Grid Transco - Potential sale of gas distribution network businesses. Initial thoughts on enduring*
Office of Gas and Electricity Markets 79 25/04/2005

1.352 In relation to the statement by a shipper/supplier that shippers and DN operators would be less likely to participate or bid long term in NTS exit auctions as they would not have had time to be able to evaluate all the risks, opportunities and issues associated with them. However, Ofgem would note that Transco is proposing an open and consultative process which should allow all interested parties to gain the comfort and understanding necessary to allow full participation in the arrangements before their potential implementation.

Process

1.353 Respondents' concerns on process fell into two main categories:

- ◆ conditional licence conditions; and
- ◆ impact assessment of enduring arrangements.

Conditional licence conditions

1.354 Ofgem notes the concerns raised by respondents with regards to the conditional nature of the licence condition proposed. However, Ofgem would also note that the arrangements proposed have been subject to extensive consultation, both through Ofgem's Final IA and within earlier RIAs on the arrangements for offtake and interruption.

1.355 Ofgem would note that the Authority has reached its decision with respect to the enduring offtake arrangements with regard to its principal objective to protect the interests of customers as well as the statutory duties and licence obligations of gas transporters. The Authority remains of the view that the offtake arrangements, including both the NTS exit capacity and NTS offtake flexibility arrangements, are necessary to protect the interests of customers in a divested industry structure and, as such, are reasonable and proportionate requirements. Consistent with this decision and in the light of Transco's investment lead times, the Authority continues to consider that the arrangements should be in place by September 2005.

- 1.356 The Authority considers that it is particularly important to ensure that there are non-discriminatory (and therefore price-based) arrangements for access to capacity and flexibility given that both DNs and shippers securing capacity on behalf of NTS direct connects will be competing to secure this capacity across the new NTS/DN interface created by DN sales. In the absence of non-discriminatory arrangements, the Authority considers that capacity may not be allocated to those that value it most in the short term and competition between existing participants and with respect to new entrants may be distorted.
- 1.357 Ofgem would also note that whilst it has been, and will continue to be, involved in the development of the overarching principles of the enduring offtake arrangements, Transco will bring forward modification proposals which develop the detail of those arrangements. The Authority does not believe that its discretion in considering any such modification proposal has been fettered. Furthermore, the Authority will consider any modification proposal and any alternative modification proposals raised on the NTS offtake arrangements in relation to whether they better facilitate the relevant objectives as set out in Standard Special Condition A11.
- 1.358 Ofgem notes respondents' views with respect to timescales, but would also note that the high level principles of the arrangements envisaged have been clear following the release of the Authority's decisions on the offtake and interruptions arrangements in August 2004¹⁵. Therefore Ofgem considers that industry participants have had the opportunity to consider the appropriate nature of these arrangements. Ofgem would further note that should any modification proposal raised by Transco on the enduring offtake arrangements be implemented, further enhancements will be possible as these arrangements will be subject to refinements as part of the UNC modification process in the normal way.
- 1.359 Ofgem notes the views expressed by one respondent that the licence consultation may prejudice panel decisions and rights of appeal. Ofgem considers, however, that all GTs will have to act on the panel in a way that is consistent with their statutory and licence duties. Consideration by the DTI of the appeals process is ongoing. As such, it is not possible for Ofgem to understand, in full, the details of the appeals process. In the event that panel

¹⁵ 199/04 - Offtake Arrangements, Conclusions document on framework and 198/04 - Interruptions

members' votes should be evenly split, the UNC modification rules state that the resulting recommendation to the Authority will be to reject the modification proposal. In these circumstances, and on the assumption that appeals on modification proposals are based on panel recommendations, any decision by Ofgem to implement the proposal would then be appealable. It should also be noted that the UNC proposals envisage a "sunrise"¹⁶ clause when the DTI position on appeals becomes known.

Impact assessment of enduring arrangements

- 1.360 With regards to comments raised by respondents regarding Ofgem's Final IA¹⁷, Ofgem would note the Authority's view, as stated in the February decision document continues to be, that the Final IA was reasonable and robust. This IA considered the potential costs and benefits of DN sales and the associated regulatory, commercial and operational framework, of which the enduring offtake arrangements are a key part. The costs that the proposed framework of arrangements would impose upon other industry participants including shippers/suppliers, NTS direct connects, Ofgem and the HSE were considered as part of this assessment. When reaching its decision in January, the Authority recognised that the details of the regulatory, commercial and operational framework are currently in development and, as such, that it was not possible to calculate exactly the costs that shippers could potentially incur associated with the administration of the arrangements, including the proposed NTS offtake flexibility arrangements. Nevertheless, the Authority was satisfied that the arrangements against which shippers provided cost information to Ofgem were sufficiently defined by Ofgem, at the time the shipper cost surveys were issued, to allow a reasonable cost estimate to be derived.
- 1.361 In this respect, Ofgem would note that, in issuing the shipper cost surveys, Ofgem provided detailed guidance to shippers with respect to their completion, as well as an assumptions paper detailing the proposed regulatory, commercial and operational framework including the offtake arrangements. Further, the survey pro forma enabled shippers to provide detailed cost information on IT

Arrangements, Conclusions document on framework

¹⁶ The "sunrise" clause is a commitment by Transco to conduct a review of the modification rules.

¹⁷ *National Grid Transco – Potential sale of gas distribution network businesses, Final Impact Assessment*, Ofgem, November 2004

systems and staff costs associated with the implementation of the offtake arrangements as well as their ongoing management. In addition, Ofgem held meetings with a number of these shippers/suppliers to understand their pro forma submissions.

1.362 Whilst Ofgem agrees that the flexibility component of the proposed arrangements represents a new concept and that the determination of costs associated with these arrangements is therefore potentially more difficult, Ofgem considers that this is not the case with respect to the NTS flat capacity component of the proposed arrangements given that this is similar to the regime already in place.

1.363 Ofgem would also note that Appendix 5 of the Final IA drew together the proposals relating to reform of offtake arrangements, interruptions arrangements and agency and governance and to describe ways in which it was envisaged that a variety of industry participants would interact with the proposed arrangements. The industry participants included in this appendix were selected to represent a broad cross-section of the industry and included:

- ◆ NTS connected industrial plants (e.g. chemical plants);
- ◆ NTS connected gas fired power stations;
- ◆ Interconnectors and storage sites;
- ◆ DNs; and
- ◆ DN connected customers.

1.364 Ofgem would further note that all of Ofgem's consultations, including the Offtake Arrangements RIA, the Interruption Arrangements RIA and the Final IA were, and are, open to all interested parties and published on the Ofgem website. In addition, DISG meetings have been open to all parties to attend with minutes being made available on Ofgem's website. The Authority has taken into full consideration the views expressed by all respondents who chose to respond to these consultations. Furthermore, Ofgem has offered bilateral meetings to parties with particular concerns and will continue to do so.

1.365 Ofgem notes the concerns expressed by respondents with regards to the potential impact of the enduring arrangements upon trade with other EU states,

but would state that the primary driver of the new arrangements is to ensure that all parties have access to the NTS on a non-discriminatory basis, consistent with the EU Gas Directive. Ofgem invites respondents to make representations to it on how non-discrimination arrangements can have an adverse effect on trade.

- 1.366 Ofgem notes the concerns raised by respondents with regard to whether the decisions made have been consistent with best regulatory practice. However, Ofgem considers that, in its view, the process adopted has met the objectives of transparency, accountability, proportionality and consistency and is targeted where action is needed. As stated above, and in previous documents published, the Authority is of the view that the enduring arrangements proposed are needed in order to protect the interests of customers in a divested industry structure, and the Authority has endeavoured to conduct as open and as transparent a process as possible to achieve this aim. Furthermore, Ofgem would note, that in formulating the Final IA, Cabinet Office guidelines were considered, and followed as far as possible.
- 1.367 Ofgem would note that the development of the enduring arrangements is an ongoing process and, as such, Ofgem would encourage further input from interested parties in the development of these arrangements. Whilst the Authority does not believe that a further IA on the enduring arrangements is necessary, the Authority welcomes the proposals of the Gas Forum to conduct its own analysis of the enduring offtake arrangements and also would welcome the submission of analysis from any interested parties for consideration.

Nature of proposals

- 1.368 Ofgem has considered the concerns raised by respondents in relation to the nature of the enduring offtake arrangements proposals. At the outset, it is important to emphasise that the detail of the arrangements are still subject to further development and consultation. Nevertheless, Ofgem offers the following comments in response to issues raised by respondents.
- 1.369 In relation to the suggestion by one shipper/supplier that arrangements for the provision of flow flexibility capacity should not apply to direct connect users of the NTS (end users, storage, Interconnectors) and that they should be exempt from these arrangements, Ofgem considers that both DNs and NTS direct connects both use NTS exit capacity and NTS exit flexibility and that differential

arrangements on an enduring basis in a divested industry structure would be discriminatory and would distort the investment signals provided by NTS direct connects and the DNs to the detriment of customers.

- 1.370 Ofgem also considers that the presence of non-discriminatory arrangements in the short term would ensure that where capacity on the network is scarce, it goes to those who value it most ensuring an efficient allocation.
- 1.371 Ofgem also notes the concerns raised by one shipper/supplier which drew parallels with the entry regime and the nature of information available in that regime. Ofgem would note that clear and transparent information release is important at exit and that specific concerns of detail can be raised with Transco through the modification process.
- 1.372 One shipper/supplier stated that industrial customers and generators would carry the operational price risk as many bilateral contracts with large customers treat transportation on a pass-through basis. Ofgem considers that, in a competitive market, customers should be in a position to choose the level of exposure to price risk that they wish to take and contract accordingly. However, Ofgem would note that where contracts are formulated on a pass-through basis, customers will bear the price risk of the arrangements proposed.
- 1.373 With regards to the comment raised by a shipper/supplier that the issue of constrained NTS flexibility should be dealt with by a similar mechanism as NTS emergencies, Ofgem would note that such an ex-post administered approach to capacity constraints can lead to significant inefficiencies in the allocation of capacity and therefore costs to customers, as administrative rules do not necessarily ensure that those who value this scarce capacity most highly actually have access to it during the period of scarcity. In Ofgem's view, this is inefficient and that it is preferable, therefore for a market based ex ante regime to be established to ensure capacity and flexibility are allocated efficiently in the short and long run.
- 1.374 In response to the assertion by the AEP, that the proposed arrangements would have a negative impact on security of supply, Ofgem considers that the long term investment signals that would be generated by the proposed arrangements would benefit long term security of supply. In particular, Ofgem considers that the proposed arrangements would represent an improvement to the existing NTS

planning arrangements as DNs and NTS direct connect shippers will be in a better position than Transco to understand their future capacity requirements. Ofgem would also note that Transco supports the view that investment signals obtained from DNs and direct connects under the proposed arrangements should serve to underpin the long-term economic and efficient development of a secure transmission network.

1.375 In relation to specific issues raised by one shipper/supplier on the February decision document, Ofgem would note the following, in relation to those issues not already addressed above:

- ◆ the Authority's decision was based on consideration of the Final IA and the responses received in relation to this consultation, as well as the Offtake Arrangements RIA and Interruptions Arrangements RIA and the views of respondents in relation to these consultations;
- ◆ Ofgem would argue that many of the principles applied at entry have some applicability to exit, and would note that, in reaching its decisions on the appropriate framework of arrangements, the Authority has been mindful, not only of the lessons that can be learnt from the entry arrangements, but also of areas where key differences between the two regimes need to be taken into account;
- ◆ Ofgem would note that references to "new entrants" within the February decision document related to circumstances where additional NTS exit demand comes onto the system. Under the current arrangements, the allocation of capacity is undertaken on a "first come, first served" basis and it is possible that shippers acting on behalf of new entrants may not receive firm exit capacity even though they may value that capacity more than a shipper acting on behalf of an incumbent user. Ofgem would note that the new arrangements would therefore not discriminate between new and existing capacity demand, and would therefore be consistent with Transco's statutory duty to avoid any undue preference or undue discrimination in the terms on which it undertakes to convey gas (section 9(2)(b) of the Gas Act); and
- ◆ Ofgem would also note that the Authority's principal objective states that the Authority should protect the interests of customers wherever

appropriate by “promoting effective competition between persons engaged in, or in commercial activities connected with, the shipping, transportation or supply of gas so conveyed”. As such, it is the Authority’s view, that promoting competition between shippers and those that have been granted an exemption from the need to hold a shipper’s licence under the Gas Act is consistent with its principal objective. Furthermore, Ofgem would note that the “relevant objectives” within Standard Special Condition A11 (which is proposed as part of the associated Direction) include the “securing of effective competition between DN operators (who have entered into transportation arrangements with other relevant gas transporters) and relevant shippers”.

- 1.376 Therefore, following full consideration of all respondents’ views, Ofgem remains of the view that it is appropriate to introduce Standard Special Condition A55, consistent with the Authority decision of January 2005.

Part B: Standard Special Conditions applicable to all NTS licensees

Standard Special Condition B1. Application/Disapplication of standard conditions in Section A (Interpretation, Application and Payments) and Section B (General) and Application/Disapplication of Standard Special Conditions applicable to NTS licensees

Respondents’ views

NGT

- 1.377 NGT did not comment on the switch on/off mechanism within its response.

Potential Purchasers

- 1.378 No potential purchaser commented on the switch on/off mechanism within their responses.

Shippers/suppliers

- 1.379 One shipper/supplier noted that the cross-reference to paragraph 7 in paragraph 8 of this condition should be to paragraph 6.

Ofgem's proposals

- 1.380 Ofgem notes the comment made by the shipper/supplier in relation to the cross-reference within paragraph 8 and has corrected this as part of the accompanying section 8AA and section 23 directions. This is highlighted in the table provided in Schedule 2 and the licence drafting provided in Schedule 3.

Standard Special Condition B2. Private Collective Licence Modification Procedure in respect of Standard Special Conditions applicable to NTS licensees

- 1.381 Comments and proposals with respect to the private CLM procedure are summarised under Standard Special Condition A2 above.

Part C: Special Conditions applicable to the licensee (NTS)

Special Condition C1A. NTS definition of supply of transportation services

Respondents' views

NGT

- 1.382 NGT did not comment on Special Condition C1A within its response.

Potential Purchasers

- 1.383 No potential purchasers commented on Special Condition C1A within their responses.

Shippers/suppliers

- 1.384 One shipper/supplier noted that Ofgem's proposals in relation to Special Condition C1A seemed reasonable.

Ofgem's proposals

- 1.385 Ofgem continues to consider that its proposals for Special Condition C1A are appropriate and as such, no changes are proposed.

Special Condition C2. Long Term Development Statement

Respondents' views

NGT

- 1.386 NGT did not comment on Special Condition C2 within its response.

Potential Purchasers

- 1.387 No potential purchasers commented on Special Condition C2 within their responses.

Shippers/suppliers

- 1.388 Two shippers/suppliers provided comments on long term development statements in its response. These are summarised under Standard Special Condition D3 and not repeated here.

Ofgem's proposals

- 1.389 Ofgem's proposals with respect to long term development statements are discussed under Standard Special Condition D3 and not repeated here.

Special Condition C3. Restriction of Prices for LNG Storage Services

Respondents' views

NGT

- 1.390 NGT did not comment on Special Condition C3 within its response.

Potential Purchasers

- 1.391 No potential purchasers commented on Special Condition C3 within their responses.

Shippers/suppliers

- 1.392 One shipper/supplier stated that Ofgem's proposals in relation to Special Condition C3 seemed reasonable.

Ofgem's proposals

- 1.393 Ofgem continues to consider that its proposals for Special Condition C3 are appropriate and as such, no changes are proposed.

Special Condition C4. Prohibited Procurement Activities

Respondents' views

NGT

- 1.394 NGT raised a concern in relation to both Special Condition C4 and Standard Special Condition D4 with respect to shrinkage procurement. These concerns are discussed under Standard Special Condition D4 and are not repeated here.

Potential Purchasers

- 1.395 No potential purchasers commented on Special Condition C4 within their responses.

Shippers/suppliers

- 1.396 Shipper/supplier comments received in relation to both Special Condition C4 and Standard Special Condition D4 are summarised under Standard Special Condition D4 and are not repeated here.

Ofgem's proposals

- 1.397 Ofgem's proposals in relation to Special Condition C4 and Standard Special Condition D4 are detailed under Standard Special Condition D4 later in this Schedule and are not repeated here.

Special Condition C5. Licensee's procurement and use of system management services

Respondents' views

NGT

- 1.398 NGT did not comment on Special Condition C5 within its response.

Potential Purchasers

- 1.399 No potential purchasers commented on Special Condition C5 within their responses.

Shippers/suppliers

- 1.400 One shipper/supplier noted that the provisions of Special Condition 17 had been superseded by the System Management Principles Statement. However, this shipper/supplier stated that they remained concerned about setting out key commercial gas transportation terms outside the UNC, as they considered that providing a vehicle for Transco to hive-off market rules into a non code document would be unhelpful, not least because it would prevent shippers putting forward changes to such rules via a modification proposal.
- 1.401 This shipper/supplier expressed concern about the extent to which DN operators would seek to offer system management services outside the UNC, and considered that current Transco practice could be replicated by DN operators procuring widely differing services which would increase transaction costs and

complexity for shippers and customers. This shipper/supplier stated that it was unclear to what extent services would be defined within the UNC.

- 1.402 This shipper/supplier also noted that, in relation to the drafting of Special Condition C5, this should only be relevant to the day 1 (“interim”) arrangements, and as such, the reference to NTS exit flow flexibility under clause 6 (c) (iii) should be removed. The shipper/supplier stated that this drafting assumed the introduction of a particular form of “enduring” arrangements which would pre-judge the outcome of a possible future UNC modification proposal and that, as such, it need not apply to shippers at this stage.
- 1.403 One shipper/supplier provided comments on charge change provisions in relation to Special Condition C5. In this Schedule, all comments received in relation to charge change provisions are discussed under Standard Special Condition A4 (Charging – General) and not repeated here.

Ofgem’s proposals

- 1.404 Ofgem notes the concerns raised by a shipper/supplier, but would note that, whilst the licensee will be subject to the provisions of the network code in relation to system balancing and market rules, the kinds of system management services purchased and the mechanisms used for purchasing, entering into or otherwise acquiring these services is not a network code matter. Ofgem would also note that this condition only applies to the NTS and that the merits of equivalent provisions for DNs would be considered by the Authority on their merits at the appropriate time, given the potential scope and costs of divergence across DNs.
- 1.405 In relation to the inclusion of a reference to “NTS exit flow flexibility”, Ofgem would note that NTS exit flow flexibility is part of the incentive arrangements proposed within the interim period for the DNs. Furthermore, references to NTS exit flow flexibility and NTS exit capacity were merely introduced into Special Condition C5 to ensure that, to the extent applicable, if the NTS operator revised the system management services adjustment data methodology, it should consult DN operators if there were a potential impact upon the products at the NTS / DN interface, namely NTS exit flow flexibility and NTS exit capacity. In addition, it is Ofgem’s view that, should modifications be necessary following the outcome of a future UNC modification proposal regarding enduring

arrangements, such modifications could be performed at the same time as the other licence modifications that will be necessary to implement such enduring arrangements.

- 1.406 Ofgem therefore continues to consider that its proposals for Special Condition C5 are appropriate and as such, no changes are proposed.
- 1.407 Ofgem's proposals on charge change provisions in relation to Special Condition C5 are discussed under Standard Special Condition A4 (Charging – General) earlier in this Schedule and not repeated here.

Special Condition C7. Charging Obligations

Respondents' views

NGT

- 1.408 NGT did not comment on Special Condition C7 within its response.

Potential Purchasers

- 1.409 No potential purchasers commented on Special Condition C7 within their responses.

Shippers/suppliers

- 1.410 Two shippers/suppliers provided comments on charge change provisions in relation to Special Condition C7. These comments are summarised, and addressed, under Standard Special Condition A4 (Charging – General) earlier in this Schedule and not repeated here.

Ofgem's proposals

- 1.411 Two shippers/suppliers provided comments on charge change provisions. However, these comments are summarised, and addressed, under Standard Special Condition A4 (Charging – General) earlier in this Schedule and not repeated here.

Special Condition C8A. Revenue restriction definitions in respect of the NTS transportation owner activity and NTS system operation activity

Respondents' views

NGT

- 1.412 NGT did not comment on Special Condition C8A within its response.

Potential Purchasers

- 1.413 No potential purchasers commented on Special Condition C8A within their responses.

Shippers/suppliers

- 1.414 One shipper/supplier stated that the word “that” in the definition of “firm entry capacity” was not needed and could be removed.

Ofgem's proposals

- 1.415 Ofgem notes the comments made by a shipper/supplier in relation to the definition of “firm entry capacity” and will propose this modification as part of the April section 23 consultation.

Special Condition C9. Allocation of revenues and costs for calculations under the price control in respect of the NTS transportation owner activity and NTS system operation activity

Respondents' views

NGT

- 1.416 NGT did not comment on Special Condition C9 within its response.

Potential Purchasers

- 1.417 No potential purchaser commented on Special Condition C9 within their responses.

Shippers/suppliers

- 1.418 One shipper/supplier stated that it would be helpful to understand whether paragraph 1(b)(ii)(dd) would capture unlicensed companies or activities within the group.

Ofgem's proposals

- 1.419 Ofgem would note that the use of the phrase "any other company or organisation" is a very broad provision which would capture all companies whether regulated or unregulated. As such, Ofgem does not propose any modifications to Special Condition C9.

Special Condition C10. Supplementary provisions of the revenue restrictions in respect of the NTS transportation owner activity and NTS system operation activity

Respondents' views

NGT

- 1.420 NGT did not comment on Special Condition C10 within its response.

Potential Purchasers

- 1.421 No potential purchasers commented on Special Condition C10 within their responses.

Shippers/suppliers

- 1.422 One shipper/supplier noted that sub-paragraph (b) of paragraph 3 would read more easily if "derive" was changed to "derived".

Ofgem's proposals

- 1.423 Ofgem notes the comment made by the shipper/supplier in relation to the wording of paragraph 3 intends to propose these changes as part of the April section 23 consultation.

Special Condition C15. Licensee's methodology for determining incremental entry capacity volumes

Respondents' views

NGT

- 1.424 NGT did not comment on Special Condition C15 within its response.

Potential Purchasers

- 1.425 No potential purchasers commented on Special Condition C15 within their responses.

Shippers/suppliers

- 1.426 One shipper/supplier stated that it would be helpful to include a requirement to publish the statements required under paragraph 10 on a suitable web-site, free of charge, as well as in hard copy with an associated cost.

Ofgem's proposals

- 1.427 In response to the comment raised by a shipper/supplier regarding publication of the paragraph 10 statement on an appropriate web-site, Ofgem would note that paragraph 10 allows the Authority to specify the manner of publication, and therefore no licence modification is required.

Special Condition C17. Exit Code Statement

Respondents' views

NGT

- 1.428 NGT did not comment on Special Condition C17 within its response.

Potential Purchasers

- 1.429 No potential purchasers commented on Special Condition C17 within their responses.

Shippers/suppliers

- 1.430 One shipper/supplier stated that they considered that both Special Condition C17 and Standard Special Condition D7 would continue to be required and that they should not cease to have effect at hive-down. This shipper/supplier stated that the Ofgem proposals assumed implementation of ("market based") enduring offtake arrangements and that this would remove the "administrative arrangements" that persist with the "interim" regime. The shipper/supplier considered that as such an outcome is by no means certain, it would be unwise to hastily remove this condition.

Ofgem's proposals

- 1.431 Ofgem notes the concerns raised by a shipper/supplier, but believes that the proposal, stated in the February document, that these conditions should be removed / switched off at the same time that the enduring exit arrangements are introduced should address these concerns. As such, Ofgem does not propose any modifications to these conditions.

Special Condition C20. Separation of NTS and Distribution Network Businesses

Respondents' views

NGT

- 1.432 NGT stated that, in respect of business separation, the measures proposed in the February document and in the draft C20 Compliance Statement represent a comprehensive mitigation of any risks of undue discrimination by transmission. Indeed, NGT stated that these go further than is required in several respects when the total transparency of any potential wrongdoing and the degree and impact of any risk is fully understood and considered. In making its response, NGT therefore assumed that these measures would be accepted and that no

additional business separation requirements would be imposed through licence conditions or through the Compliance Statements.

Potential Purchasers

- 1.433 No potential purchasers commented on Special Condition C20 within their response.

Shippers/suppliers

- 1.434 One shipper/supplier stated that they did not see the need to strengthen the obligation to “best endeavours”, consistent with comments raised in relation to Standard Special Condition A33.
- 1.435 One shipper/supplier noted that, in relation to this condition, and Special Condition E10, the effect of paragraph 5 is that the managerial board charged with directing affairs and taking substantial decisions could consist of just two members, both of whom are directors of Transco plc. Furthermore, the shipper/supplier highlighted that there was nothing to prevent these two individuals being the same individuals for the NTS and the RDN boards. This shipper/supplier stated that, whilst they understood that the licence requirements were reflective of the position under the Companies Act, provisions should be incorporated within this condition to ensure that the boards include a wider representation and that some members of the managerial boards should not sit on the board of both the NTS and RDNs.
- 1.436 This shipper/supplier also noted that, whilst it did not form part of this consultation, NGT had issued a draft of the statement required by this condition and that this shipper/supplier had concerns regarding compliance with Special Condition C20 and the level of detail provided.

Ofgem’s proposals

- 1.437 Ofgem has considered NGT’s response in relation to the draft compliance statement related to Special Condition C20 and would note that Ofgem does not envisage any material changes to Special Condition C20 as part of the April section 23 consultation.

- 1.438 Ofgem notes the comments raised with respect to the “best endeavours” obligation within the proposed drafting. However, Ofgem remains of the view that a “best endeavours” obligation is appropriate and therefore does not propose to make any modifications in this regard. As set out in the February document, Ofgem amended the reasonable endeavours obligation proposed in respect of compliance with Transco’s monopoly to monopoly business separation statements to one of best endeavours in response to comments raised by potential purchasers. As compliance with the business separation statements is so important, Ofgem considers that the best endeavours obligation should be introduced and that the benefit that will result from this justifies the divergence from the related obligations in electricity.
- 1.439 In relation to the comments raised by a shipper/supplier, Ofgem acknowledges that the licence drafting does not prohibit the situation that they describe with respect to the constituency of the board. However, Ofgem would note that, had legal separation of the NTS and RDN businesses occurred, such a situation could also prevail under the terms of the Companies Act. As such, Ofgem does not believe that a modification is appropriate in this regard.

Special Condition C21. Appointment and duties of the business separation compliance officer

Respondents’ views

NGT

- 1.440 NGT did not comment on Special Condition C21 within its response.

Potential Purchasers

- 1.441 No potential purchasers commented on Special Condition C21 within their responses.

Shippers/suppliers

- 1.442 One shipper/supplier stated that the proposed arrangements in relation to Special Condition C21 seemed satisfactory.

1.443 Another shipper/supplier stated that it may be useful to consider whom the licensee “is” in this condition and also whom the supervisory body should be, i.e. whether it should be a sub committee of the board of directors of the licensee or whether it should be a sub committee of the main board, i.e. the board of NGT. This shipper/supplier also stated that, under paragraph 5, it is not at all clear how any other party would be able to prove that a complaint should/could be made and that the reports produced should be independently audited prior to publication.

Ofgem’s proposals

1.444 In response to the concerns raised by a shipper/supplier, Ofgem would note that with respect to this condition the licensee is the NTS operator, and that, under the provisions of paragraph 3, the compliance committee should be a sub-committee of the board of directors of the licensee and should report to the audit committee of the ultimate controller (in this case NGT).

1.445 Ofgem also notes the comments raised in respect of paragraph 5, but would note that should such complaints be made, the licensee shall have a duty to make these available to the business separation compliance officer.

1.446 In addition, Ofgem notes the comments made with respect to the audit of compliance statements but, as stated under Standard Special Condition A34 earlier in this Schedule, Ofgem would state that for reasons of consistency, both across network licences and across business separation conditions within the GT licence, Ofgem does not believe that such an audit is appropriate.

1.447 Ofgem continues to consider that its proposals for Special Condition C21 are appropriate and as such, no changes are proposed.

Part D: Standard Special Conditions applicable to all DN licensees

Standard Special Condition D1. Application/Disapplication of standard conditions in Section A (Interpretation, Application and Payments) and Section B (general) and Application/Disapplication of Standard Special Conditions applicable to DN licensees

Respondents' views

NGT

- 1.448 NGT did not comment on the switch on/off mechanism within its response.

Potential Purchasers

- 1.449 No potential purchaser commented on the switch on/off mechanism within their responses.

Shippers/suppliers

- 1.450 One shipper/supplier noted that the cross-reference to paragraph 7 in paragraph 8 of this condition should be to paragraph 6.

Ofgem's proposals

- 1.451 Ofgem notes the comment made by the shipper/supplier in relation to the cross-reference within paragraph 8 and has corrected this as part of the accompanying section 8AA and section 23 directions. This is highlighted in the table provided in Schedule 2 and the licence drafting provided in Schedule 3.

***Standard Special Condition D2. Private Collective Licence
Modification Procedure in respect of Standard Special
Conditions applicable to DN licensees***

- 1.452 Comments and proposals with respect to the private CLM procedure are summarised under Standard Special Condition A2 above.

***Standard Special Condition D3. Long Term Development
Statements***

Respondents' views

NGT

- 1.453 NGT did not comment on Standard Special Condition D3 within its response.

Potential Purchasers

- 1.454 One potential purchaser noted that Ofgem was currently consulting on the future scope, form and timing of the long term development statements provided for under these conditions and stated that they would be responding to that consultation. However, this potential purchaser was of the opinion that the wording in paragraph 2 should revert to the existing wording of Amended Standard Condition 25. As such, the paragraph would read "Except in so far as the Authority consents to the licensee not doing so, the licensee shall on an annual basis prepare a revision of any statement prepared under paragraph one so as to ensure that, so far as is reasonably practicable, the information in the revised statement is up to date". This potential purchaser stated that they saw no reason for the proposed "reasonable endeavours" obligation to perpetually update the statement throughout the year arguing that this was not required for DN sales, was impractical and was also potentially extremely costly.
- 1.455 No other potential purchasers commented on Standard Special Condition D3 within their responses.

Shippers/suppliers

- 1.456 One shipper/supplier stated that it was important for Transco to provide a co-ordinated view of supply demand fundamentals and the associated investment in “strategic” infrastructure. This respondent stated that any DN statements should inform Transco’s assumptions underpinning the NTS long term development statement. This shipper/supplier stated that they supported the flexibility in timing but did not see the need for detailed statements relating to lower pressure systems and furthermore that removal of the words “high pressure” would go beyond what is necessary to facilitate the sale of gas distribution networks. This shipper/supplier stated that the removal of these words in combination with broadly drafted clauses that would allow the Authority to dictate the format of such statements could lead to unnecessarily intrusive regulation, with little or no discernable benefit to consumers.
- 1.457 Another shipper/supplier stated that it would be helpful to confirm whether the directions given by the Authority will deal with the issue of timing of the production of the statements by the NTS and DNs to facilitate the preparation of the overall ten year statements. Furthermore, this shipper/supplier stated that, under paragraph 3(c), it would be helpful to include a requirement to publish the statement, free of charge on a suitable website, as well as a requirement to make the statement available in hard copy on payment of a charge.

Ofgem’s proposals

- 1.458 Ofgem notes the comments made in relation to long term development statements. Ofgem further notes that the scope and content of the Long Term Development Statement Directions in relation to both Standard Special Condition D3 and Special Condition C2 have been the subject of a separate Ofgem consultation¹⁸. Ofgem’s Direction will take into account all views expressed on this matter, both in response to the specific consultation and in response to the February document. Ofgem can confirm that the timing of the production of the statements by the NTS and DNs to facilitate the preparation of the overall ten year statements will be addressed by this Direction.

¹⁸ Long Term Development Statements, Ofgem 75/05, 8 March 2005.
Office of Gas and Electricity Markets

- 1.459 However, with regards to the comments made by a potential purchaser in relation to the drafting of paragraph 2, Ofgem would note that this is a “reasonable endeavours” obligation to ensure that the information provided in the statement is up to date. As such, Ofgem would expect licensees to apply their judgement in determining whether a new piece of information is material to the content of the statement and to act appropriately in this regard.
- 1.460 Furthermore, in response to the comments raised by a shipper/supplier in relation to making available copies of the long term development statements, Ofgem notes that as part of the Direction, it will consider requiring a summary of the long term development statements to be published on a web-site which is freely available to all interested parties (the web-site address of which shall be disseminated to such interested parties). Ofgem does not propose to amend the licence such that long term development statements themselves should be published on the web at this time, but will keep this situation under review, should those requiring copies encounter problems.

Standard Special Condition D4. Prohibited Procurement Activities

Respondents’ views

NGT

- 1.461 NGT noted that shrinkage remained a concern. Their key contentions were that prohibiting joint transactional purchase of shrinkage is unrelated to network sales, does not carry any risk of undue discrimination and, if it is not resolved, would place NGT at a disadvantage compared to IDNs and compared to its pre-network sales position. NGT argued that such a prohibition was not necessary to protect consumers.

Potential Purchasers

- 1.462 One potential purchaser stated that they understood the intent of Standard Special Condition D4 and agreed with this policy position. However, this potential purchaser stated that they were unsure as to whether the wording could preclude any capacity trading that they might in future undertake as part of the enduring offtake arrangements, especially to conform with any incentives

scheme that may be applied. This respondent noted that the condition allowed the Authority to provide written consent for such trading, but stated that if it is an integral part of the operation of the network they would prefer that the licence stated that the trading was permitted without needing to obtain written consent from the Authority.

- 1.463 Another potential purchaser stated that they were unsure whether this condition, as drafted, could prevent the DN from trading capacity and flow flexibility for efficiency purposes (rather than for explicit capacity management purposes). This potential purchaser noted that the enduring offtake arrangements business rules would allow the DN to trade capacity in order to manage its capacity holding at the NTS/DN offtake for purposes other than constraint management (for example, for efficiency purposes in line with the proposed enduring incentive arrangements).

Shippers/suppliers

- 1.464 One shipper/supplier stated that they welcomed the clarity provided by Ofgem's latest proposals.

Ofgem's proposals

- 1.465 In relation to the concerns raised by potential purchasers, following a review of the licence drafting of Standard Special Condition D4, Ofgem has concluded that this drafting would not preclude any capacity trading that DNs might, in future, undertake as part of the enduring offtake arrangements. In Ofgem's view, both NTS exit capacity and NTS exit flow flexibility would be captured by the definition of "capacity rights", given that the Network Code defines "NTS Offtake Capacity" as being "capacity in the NTS which a DNO User is treated as utilising in causing or permitting the flow of gas from the NTS to an LDZ" which comprises "NTS Offtake (Flat) Capacity" and NTS Offtake (Flexibility) Capacity"¹⁹. Furthermore, Ofgem considers that the definition of "constraint management" is sufficiently broad to ensure that acquisition of capacity rights for efficiency purposes, rather than for explicit capacity management purposes, would not be precluded. As such, Ofgem does not believe that either

¹⁹ Paragraph 1.2.3 of the Uniform Network Code – Transportation Principal document, Section B – System Use and Capacity
Office of Gas and Electricity Markets

modifications to the licence drafting, or consent under the terms of Standard Special Condition D4 are required in this regard.

- 1.466 Ofgem has further considered the issue of shrinkage procurement raised by NGT in relation to Special Condition C4 and Standard Special Condition D4. Ofgem remains of the view that the joint procurement of shrinkage gas by the NTS and RDN businesses, or indeed by a Distribution Network and a competitive affiliate, should not be allowed on the face of the licence given the potential for issues in relation to price control separation of monopoly business and separation of competitive and monopoly businesses. As such, Ofgem proposes to tighten the drafting of Special Condition C4 and Standard Special Condition D4, as part of the April section 23 consultation, such that it is clear that joint procurement is only allowed between DN operators, unless consent is otherwise granted. It is Ofgem's current intention to grant such a consent to Transco for the joint procurement of shrinkage gas by the NTS and RDN businesses, until 31 March 2007 (during which time, prices to customers are fixed), and that a review of this will be undertaken in 2007 when these consents expire.

Standard Special Condition D5. Licensee's procurement and use of system management services

Respondents' views

NGT

- 1.467 NGT did not comment on Standard Special Condition D5 within its response.

Potential Purchasers

- 1.468 One potential purchaser noted that as currently drafted, Standard Special Condition D5 would apply collectively to the four RDNs. However, this potential purchaser questioned whether it should apply to each RDN separately, consistent with other reporting obligations.
- 1.469 No other potential purchasers commented on Standard Special Condition D5 within their responses.

Shippers/suppliers

- 1.470 One shipper/supplier expressed concern that, under paragraph 3, while the terms of the system management services the DN is interested in purchasing may be publicly available and let on equivalent terms, there may be an incentive for those terms to be specified in such a way to ensure that they are most easily met by a related undertaking. This shipper/supplier stated that although they would expect this scenario to be covered by normal competition law, it would require vigilance to ensure the situation does not occur, and a readiness to investigate complaints that may arise.

Ofgem's proposals

- 1.471 Ofgem has considered the views expressed by a potential purchaser and would note that there are a number of instances within the licence where it has been deemed appropriate for information provision obligations to apply separately to each Distribution Network retained by Transco. However, such instances, in general, occur in relation to submissions that address issues of:

- ◆ performance or financial reporting where it is important for Ofgem to be able to make comparisons across DNs to assess relative performance (examples include the performance reporting within Standard Special Condition D9, performance in relation to connections targets, and the provision of regulatory accounts and price control information); and
- ◆ network specificity where the issues addressed within the submission can be clearly linked to a particular network and may justifiably be expected to differ across networks (examples include long term development statements and charging related submissions).

- 1.472 Following consideration of Standard Special Condition D5, Ofgem does not believe that it is appropriate to require separate reporting across retained Distribution Networks, particularly given that the relevant statement relates to obligations across the licensee, its affiliates and its related undertakings. Ofgem does not consider that there would be any benefits in respect of relative regulation from obtaining these reports on a separate basis for RDNs.

- 1.473 In relation to the comments raised by a shipper/supplier, Ofgem would note that competition law would apply in the circumstances described, and that Standard

Special Condition A6 (Conduct of Transportation Business) states that the licensee shall conduct its transportation business in the manner best calculated to secure that neither the licensee nor any affiliate or related undertaking of the licensee, any gas shipper or gas supplier or any DN operator obtains any unfair commercial advantage, in particular from a preferential or discriminatory arrangement. As such, Ofgem does not propose any modifications in this regard.

Standard Special Condition D6. Provision of First Call Emergency Response to the NTS operator

Respondents' views

NGT

- 1.474 NGT did not comment on Standard Special Condition D6 within its response.

Potential Purchasers

- 1.475 Two potential purchasers expressed concern with the drafting of paragraph 2 of Standard Special Condition D6:

- ◆ one potential purchaser stated their view that paragraph 2 was too widely drafted and could require the DN to perform any work that the NTS may request it to do, whether or not it was appropriate. This potential purchaser requested a licence amendment setting out that the DN would not be required to do anything that was not reasonable and suggested that a level of comfort should be provided to DNs, in this regard, prior to the implementation of the amendment;
- ◆ a second potential purchaser noted that the DN does not have to carry out physical work on the NTS unless requested to do so by Transco.

- 1.476 One of these respondents also noted that under paragraph 3 the licensee has to ensure that its staff are adequately trained to provide the service to the NTS and that this would mean that the DN would have to train its staff to permit them to work on the NTS where Transco requested the DN to carry out physical works. This potential purchaser stated that the requirement was onerous and could be

rectified by providing that the licensee would not have to provide additional training to its staff under the provisions of paragraph 4.

- 1.477 This potential purchaser also stated that the DN should be indemnified by Transco against third party claims when providing this service and that a provision relating to such third party indemnities should be included within the licence drafting for Standard Special Condition D6. This respondent noted Ofgem's view that this was a commercial issue to be dealt with by the DNs and Transco, but argued that the licence condition as currently drafted removed any commercial negotiating position of the DN. This potential purchaser noted that the DN was obliged by licence to perform the service and therefore questioned why Transco would enter into an agreement to cover third party liabilities. Furthermore, the respondent contrasted this position with that expressed in Standard Special Condition A41 where the obligation is to enter into an agreement to provide an emergency service to IGTs and in which the licence specifically requires that the agreement may include appropriate indemnities against third party claims.

Shippers/suppliers

- 1.478 No shipper/suppliers commented on Standard Special Condition D6 within their responses.

Other respondents

- 1.479 The HSE reiterated its agreement with Ofgem that it is appropriate to introduce a new licence condition requiring the DN owners to provide a first line emergency response service to the NTS. The HSE stated that they were content that the DN shall not be required to carry out any physical work on the NTS unless the NTS operator requests or authorises otherwise. The HSE stated that this provision sought to ensure that, at a later date, this would not preclude the DNs from undertaking such work. The HSE also noted that Standard Special Condition D6 stated that any emergency response service should be effected by adequately trained competent personnel.

Ofgem's proposals

- 1.480 Ofgem notes the concerns raised by potential purchasers in relation to Standard Special Condition D6 but would make the following comments:

- ◆ Ofgem would note that paragraph 2 states that the licensee shall not be required to carry out work on, or exercise control over, any part of the NTS unless requested and/or authorised to do so by the NTS operator. However, Ofgem would also note that should the NTS be unreasonable in the requests that it makes of DN operators by making decisions where the primary motivation is not one of safety, then this would be inconsistent with its safety case as approved by the HSE.
- ◆ In response to the concern raised by a potential purchaser with respect to training of its staff, Ofgem would note that the costs associated with the appropriate training of staff would have been included in the allowed operating expenditure for the DN field force along with the other costs of providing this service. Furthermore, Ofgem would note that the provision of first call emergency response is a safety issue, and therefore would consider all issues of licence compliance, for example, the interpretation of the meaning of “adequate” training in close collaboration with the HSE.
- ◆ With respect to the request that a provision relating to third party indemnities should be included within the licence drafting for Standard Special Condition D6, Ofgem would note that it would not wish to interfere in the commercial arrangements of parties in this regard. Standard Special Condition A41 (Emergency Services to or on Behalf of Another Gas Transporter) states that the terms of an offer **may** include “appropriate indemnities against third party claims” and as such, the inclusion of third party indemnities is not a requirement. By remaining silent on this issue within Standard Special Condition D6, Ofgem is not precluding such indemnities and it is noted that paragraph 5 states that any dispute over obligations of the licensee may be referred to the Authority for determination.

Standard Special Condition D7. Exit Code Statement

Respondents’ views

NGT

1.481 NGT did not comment on Standard Special Condition D7 within its response.

Potential Purchasers

- 1.482 No potential purchasers commented on Standard Special Condition D7 within their responses.

Shippers/suppliers

- 1.483 One shipper/supplier provided comments on the Exit Code Statement conditions. These comments are summarised under Special Condition C17 earlier in this Schedule and are not repeated here.

Ofgem's proposals

- 1.484 Ofgem's proposals in relation to the Exit Code Statement conditions are summarised under Special Condition C17 earlier in this Schedule and are not repeated here.

Standard Special Condition D8. Reform of Distribution

Network interruption arrangements

Respondents' views

NGT

- 1.485 NGT did not comment on Standard Special Condition D8 within its response.

Potential Purchasers

- 1.486 One potential purchaser stated that they did not support Ofgem's policy in respect of a licence obligation to reform the DN exit arrangements by 2006. Nevertheless, in recognition of Ofgem's position this potential purchaser welcomed the opportunity to meet with Ofgem to discuss expectations of such a reform.
- 1.487 No other potential purchasers commented on Standard Special Condition D8 within their responses.

Shippers/suppliers

- 1.488 Five shippers/suppliers stated that they were not supportive of this licence condition.

Links to DN sales

- 1.489 Two of these shippers/suppliers noted that the requirement for DN interruption reform was not necessary for the sale to go ahead, and as such, stated their view that there was no need for a requirement for NTS and DN-GTs to lead this reform.

Achievability of timescales

- 1.490 One shipper/supplier stated its concern that introducing such a licence condition would create a momentum for change to be presented within very short lead times (less than 1 year) which would limit the opportunity that shippers' would have to constructively influence such changes. This shipper/supplier further stated that if this condition was to be included, the proposed date should be changed to 1 April 2008 (in line with the next price control), to allow sufficient time for proposals to be developed collaboratively and for the necessary changes in systems and processes to be undertaken within appropriate lead times. One shipper/supplier also noted that they were surprised that Ofgem had chosen to ignore their views bearing in mind that they would expect any reform to the DN interruption arrangements to be significantly more complex than those being imposed at an NTS level.
- 1.491 Another shipper/supplier supported this view, stating that the proposed date was very challenging and did not afford the industry with sufficient time in which to develop the necessary proposals. This shipper/supplier stated that the industry must be allowed time to adjust to a newly fragmented structure prior to rapidly developing interruption arrangements the DN and questioned why both the NTS and DN interruption reform could not have been developed outside of the DN sale programme. This shipper/supplier stated that if there were concerns relating to inefficiencies, which had not as yet been demonstrated to the industry by Ofgem, then the logical solution would have been to delay reform to both the NTS and DN to a time where they could have been developed simultaneously.

- 1.492 This shipper/supplier further noted that the proposed timescales would mean that shippers would not have sufficient time in which to make the necessary changes to their gas sales agreements with their customers. In this regard, the shipper/supplier set out that the standard duration of these agreements are usually for a 12 month period, and that the timescales could also cause issues with respect to system development.
- 1.493 One shipper/supplier stated that they did not consider Ofgem's assertion that "this has consistently been Ofgem's position" to be a sufficient reason to choose 1 April 2006 for implementation, but that, instead, Ofgem needed to consider the considerable further work necessary on NTS offtake arrangements. This shipper/supplier stated that they continued to be concerned that Ofgem does not appear to fully take into account the impact that its overlapping initiatives collectively has on the industry. This shipper/supplier further stated that if the Authority were to continue with these proposals, the date should be changed to April 2007 and cited that this would not prevent earlier implementation of the arrangements if this proved to be possible.

Process

- 1.494 One shipper/supplier stated that these proposals amounted to excessive and inappropriate regulatory intervention and direction of the market and that the normal consultation process should be followed.
- 1.495 Another shipper/supplier noted that conditional licence conditions such as this (and Standard Special Condition A55) could potentially prejudice the modification decision making process. This shipper/supplier further noted that the Final Impact Assessment excluded an assessment of the costs and benefits of the offtake and interruptions regime within DNs and that Ofgem has indicated that such further reforms will be subject to a separate impact assessment. This shipper/supplier stated that, as a result, this further reform should be considered as a stand-alone project and be de-coupled from the main DN sales project, thus making licence obligations mandating licensees to promote further change unnecessary.
- 1.496 This shipper/supplier urged Ofgem to remove this licence condition on the basis that it was unnecessary, and stated that if any party believes the day 1 DN interruption arrangements are unsatisfactory they will not hesitate to propose a

change to the arrangements and there is therefore no need for licence changes to “encourage” parties to bring forward proposals.

- 1.497 Another shipper/supplier stated that, given their experiences of NTS Exit reform and Ofgem’s cost benefit analysis underpinning this, they took little comfort from the statement that “a full cost benefit analysis will be performed in advance of implementing any proposed reforms”. Another shipper/supplier stated that it was fundamental that an impact assessment be undertaken by Ofgem in order to identify the perceived benefits that such a regime change will have on customers.
- 1.498 One shipper/supplier stated that for these proposals to be implemented, modification proposals would need to be raised. This shipper/supplier sought the Authority’s confirmation that this would not require urgency to be granted. This shipper/supplier further stated that Ofgem needed to carry out a full impact assessment, and that system changes need to be implemented and contracts changed etc. Given that the full impact assessment had yet to be completed, this shipper/supplier questioned whether it was good regulatory practice to implement this licence condition at all.
- 1.499 The shipper/supplier set out that Chapter 30 of the Sustainable Energy Act 2003 states that “*before* implementing its proposal the Authority must carry out and publish an assessment of the likely impact of implementing such a proposal” (their emphasis). This shipper/supplier further stated that, in this regard, the Authority was partially implementing a proposal without first carrying out an assessment of the impact and that this did not appear in keeping with the intention of the Act.

Ofgem’s proposals

Links to DN sales and timescales

- 1.500 Ofgem has considered the views expressed by respondents in relation to Standard Special Condition D8. However, Ofgem continues to consider that it is appropriate to introduce this licence condition as the need for reform of the arrangements for interruption of sites connected to a DN will increase following DN sales.

- 1.501 A key aspect of the divested industry structure following DN sales is that there will be a new external interface at which both the DNs and shippers (on behalf of NTS direct connects) will be able to purchase NTS exit capacity under the proposed enduring offtake arrangements. Ofgem considers that in order for DNs to be able to determine their NTS exit capacity requirements at this interface they will need to be able to make efficient trade offs between the costs of interruption, physical investment on their networks and the costs of purchasing NTS exit capacity. Ofgem considers that in the absence of market based interruption arrangements on the DNs it will be difficult for the DNs to determine both the level of interruption that they require on their networks and the costs of this interruption, so as to make efficient decisions on the booking of NTS exit capacity and DN investment.
- 1.502 Ofgem therefore considers that it is important for interruption reform to be introduced on the basis that DNs will be securing NTS exit capacity under the proposed enduring arrangements from September 2005. In this respect, the introduction of DN interruption reform, including more flexible interruption contracts, by April 2006 should assist in ensuring that the DNs are booking NTS exit capacity as efficiently as possible, taking into account the costs of interruption on their own networks.
- 1.503 Ofgem notes the concerns raised by respondents with regards to the achievability of the 1 April 2006 deadline. Ofgem understands that there is a large amount of work to do in relation to the implementation of DN interruption reform and acknowledges that this deadline is challenging but remains of the view that it is achievable.

Process

- 1.504 Ofgem notes the concerns raised by respondents with regards to the conditional nature of the licence condition proposed. However, Ofgem considers that the reasonable endeavours obligation is not intended to be prescriptive and recognises that the arrangements will require industry input and detailed consultation through network code processes as well as an impact assessment undertaken by Ofgem prior to deciding whether to implement.
- 1.505 Ofgem would note that it has reached its decision in relation to this licence condition with regard to its principal objective to protect the interests of

customers as well as the statutory duties and licence obligations of gas transporters.

- 1.506 Ofgem would also note that, whilst it will continue to be involved in the development of the overarching principles of DN interruption reform, it will be for the DN licensees to establish proposals and bring forward modification proposals that develop the detail of those arrangements. The Authority does not believe that its discretion in considering any such proposals has been fettered. Ofgem will consider any DN modification proposals as well as any alternative modification proposals raised in relation to whether they better facilitate the relevant objectives as set out in Standard Special Condition A11 of the DN-GT licences. Ofgem would further note that should modification proposals raised on DN interruption reform be implemented, further enhancements will be possible as part of the UNC modification process in the normal way.
- 1.507 As stated previously, Ofgem proposes to conduct a full impact assessment, with respect to interruption reform, before any detailed modification proposal is implemented. In Ofgem's view, this impact assessment will address the concerns raised by a respondent with respect to Chapter 30 of the Sustainable Energy Act 2003.
- 1.508 Ofgem welcomes discussions with all parties, including DNs regarding the development and implementation of DN interruption reforms.

Standard Special Condition D10. Provision of connections information

Respondents' views

NGT

- 1.509 NGT did not comment on Standard Special Condition D10 within its response.

Potential Purchasers

- 1.510 No potential purchasers commented on Standard Special Condition D10 within their responses.

Shippers/suppliers

- 1.511 One shipper/supplier stated that they were supportive of Ofgem's current proposals.
- 1.512 One shipper/supplier made a number of comments on the proposed drafting of Standard Special Condition D10. These comments include the following:
- ◆ the Overall Standards were still set significantly below (at 90%) what they would expect to see and that, as such, for the remaining 10% of customers there would be no incentive to focus on final outcomes;
 - ◆ a key industry concern was to ensure that quotations were accurate and under the current scheme that deals with incorrect prices, it is estimated that less than 20% of current quotations being returned would be caught;
 - ◆ existing arrangements secure domestic connections usually within D + 15 days but, under the revised proposals, this requirement could be met by the provision of a date of completion of the connection work which has no regulated time limit and which may reduce the existing performance measures; and
 - ◆ the proposals are capped at a limit of 5 domestic properties which could disadvantage local regeneration projects and smaller local builders providing infill services.
- 1.513 Another shipper/supplier stated that, bearing in mind Transco's poor performance in providing connection services over a number of years it was perhaps not surprising that Ofgem had decided not to increase the overall standards percentage targets and to set the timescales for carrying out standards at the top end of the range. The shipper/supplier stated that, this being the case, Transco, and each IDN, should now be willing to commit (albeit on an informal basis) to pay compensation to shippers, at an equivalent level as would be payable under the new guaranteed standards legislation which Ofgem has stated it intends to introduce shortly, should DN's fail to meet these standards. This shipper/supplier stated that Ofgem had stated previously that they had secured such commitments from Transco and two of the three new DN owners, and this shipper/supplier requested confirmation that the remaining new DN owner had now given such a commitment.

1.514 This shipper/supplier further noted that Ofgem did not consider it appropriate to adopt a “soft landing” approach and assumed this was based on assurances obtained from DNs that all the systems and reporting required to monitor performance under these standards, and payments due under any informal compensation scheme, would be in place from the completion date. This shipper/supplier noted that they had yet to receive such assurances themselves, either formally or anecdotally, and remained concerned that shippers would still struggle to measure and reconcile DN connection performance without these.

Ofgem’s proposals

1.515 In relation to the comments raised by one shipper/supplier, Ofgem would note the following:

- ◆ the 90% figure is consistent with the existing connections targets and reflects a level of service that a DN operator can reasonably be expected to achieve. Ofgem’s view is that setting a more onerous performance target may adversely impact on the quality of connection services as the DN may focus more on achieving performance targets at a cost to the quality of service provided. In respect of the incentives to perform for the remaining 10% of customers, it is important to note that the Gas Standards of Performance Regulations (S.I) incentivise DN operators to perform as failures in this respect will result in compensation to be paid to customers. If all DN operators voluntarily apply the S.I to all customer groups, these customers will receive compensation in the event of poor performance. A failure by DN operators to meet the licence performance standards may result in further regulatory intervention i.e. enforcement action. GTs will be required to provide statistics detailing performance across these customer groups, including customers who experience poor performance;
- ◆ Ofgem has structured the standards to provide incentives to DN operators to provide accurate quotations, with a reasonable amount of time to provide such quotations. Given that it is not possible to ensure that every quotation is accurate, it is important to provide a mechanism to allow customers to challenge the accuracy of quotations and seek redress in the event of an inaccurate quotation being provided;

- ◆ under the enforcement order, Transco did not incur financial penalties for failing to complete works, but rather the compensation arrangements applied to quotations only. Representations from some shippers and suppliers stressed the need for a connections regime that also incentivised DN operators to focus on the post quotation connection activities i.e. substantial completion of physical works. The inclusion of performance standards on providing a date for commencement of works and meeting a date for substantial completion provides for a more balanced connections regime as it places equal importance on quotations performance and post quotation performance; and
- ◆ Ofgem's decision to exclude new build developments, of at least 5 domestic premises, was based on evidence that competition was effective in developments above that size. All DN operators will be obliged by the licence condition to maintain statistics in relation to performance for customer groups outside the protection of the new standards regime. If performance is poor, Ofgem will consider the need to extend the scheme to incorporate such customers. Ofgem considers that the regime should provide improved protection to the vast majority of customers requesting connection services.

1.516 Ofgem would further note, in relation to comments made by a second shipper/supplier, that Transco has voluntarily agreed to make payments to customers not protected by the new regulations to ensure that their level of protection is equivalent to that available to end customers. Ofgem has encouraged other DNs to adopt the same position. Ofgem intends to write to all new DN owners to request confirmation of their position. If new DN owners do not follow Transco's example, Ofgem will have to consider the need to amend section 33AA of the Gas Act.

1.517 Following consideration of respondents' views, Ofgem does not propose any modifications to Standard Special Condition D10.

Standard Special Condition D11. Charging Obligations

Respondents' views

NGT

- 1.518 NGT did not comment on Standard Special Condition D11 within its response.

Potential Purchasers

- 1.519 No potential purchasers commented on Standard Special Condition D11 within their responses.

Shippers/suppliers

- 1.520 Shippers/suppliers provided comments on charge change provisions. However, these comments are summarised, and addressed, under Standard Special Condition A4 (Charging – General) earlier in this Schedule and not repeated here.

Ofgem's proposals

- 1.521 Ofgem's proposals in relation to charge change provisions are addressed under Standard Special Condition A4 (Charging – General) earlier in this Schedule and not repeated here.

Part E: Special Conditions applicable to the licensee (DN)

Special Condition E2A. Revenue restriction definitions in respect of the Distribution Network

Respondents' views

NGT

- 1.522 NGT did not comment on Special Condition E2A within its response.

Potential Purchasers

- 1.523 One potential purchaser made a number of comments on the proposed drafting of Special Condition E2A. These were as follows:
- ◆ that a definition of “distribution network capacity” is required since it is referred to in Part 2 Paragraph 14(6)(i);
 - ◆ that a definition of “curtailment day” is required for the DN definitions since it is referred to in Special Condition E6 under “Exit Information Reporting”; and
 - ◆ that the definition of “formula year” states that $t = 1$ means the year starting 1 April 2004, but that for clarity it may be helpful to add the words “except in relation to Special Condition E5 where $t = 1$ means year commencing 1 April 2002 at 06:00hrs”.

- 1.524 No other potential purchasers commented on Special Condition E2A within their responses.

Shippers/suppliers

- 1.525 One shipper/supplier stated that the word “that” in the definition of “firm entry capacity” was not needed and could be removed.

Ofgem’s proposals

- 1.526 Ofgem has fully considered the views expressed by a potential purchaser on the drafting of Special Condition E2A and therefore proposes to introduce definitions of “distribution network capacity” and “curtailment day” into Special Condition E2A as part of the April section 23 consultation.
- 1.527 With regard to the comment on the definition of “formula year”, Ofgem would note that the definitions within Special Condition E2A are only intended to apply to Special Condition E2A and Special Condition E2B, and as such, the definition of “formula year” within Special Condition E5 is not inconsistent. However, as part of the April section 23 consultation, Ofgem proposes to clarify Special Condition E2A (and the equivalent NTS condition – Special Condition C8A) regarding the applicability of the definitions within this condition. As part of the April section 23 consultation, Ofgem also proposes to clarify that the terms used

within the information reporting condition, Special Condition E6 (and the equivalent NTS condition – Special Condition C14), should be as defined in Special Conditions E2A and E2B (or Special Conditions C8A and C8B in the case of the NTS).

- 1.528 Furthermore, Ofgem notes the comments made by a shipper/supplier in relation to the definition of “firm entry capacity” and will propose this modification as part of the April section 23 consultation.

Special Condition E2B. Restriction of revenue in respect of the Distribution Network transportation activity

Respondents’ views

NGT

- 1.529 NGT did not comment on Special Condition E2B within its response.

Potential Purchasers

- 1.530 No potential purchasers commented on Special Condition E2B within their responses.

Shippers/suppliers

- 1.531 One shipper/supplier noted that the cross-reference in paragraph 10(4) to “Part I b” should be to “Part 1 b”.

Ofgem’s proposals

- 1.532 Ofgem notes the comment made by the shipper/supplier in relation to the cross-reference within paragraph 10(4) and proposes to correct this as part of the more extensive changes proposed for this condition as part of the April section 23 consultation.

Special Condition E4. Supplementary provisions of the revenue restrictions in respect of the Distribution Network

Respondents' views

NGT

- 1.533 NGT did not comment on Special Condition E4 within its response.

Potential Purchasers

- 1.534 No potential purchasers commented on Special Condition E4 within their responses.

Shippers/suppliers

- 1.535 One shipper/supplier noted that paragraph 3 and its sub-paragraphs may need rewording as they did not seem to flow.

Ofgem's proposals

- 1.536 Ofgem notes the comment made by the shipper/supplier in relation to the wording of paragraph 3 and proposes to correct this as part of the April section 23 consultation.

Special Condition E10. Separation of NTS and Distribution Network Businesses

Respondents' views

NGT

- 1.537 NGT did not comment on Special Condition E10 within its response.

Potential Purchasers

- 1.538 No potential purchasers commented on Special Condition E10 within their responses.

Shippers/suppliers

- 1.539 Three shippers/suppliers made comments in relation to both Special Condition C20 and Special Condition E10. These comments are summarised under Special Condition C20 and are not repeated here.

Ofgem's proposals

- 1.540 Ofgem's proposals in relation to NTS and RDN business separation provisions are provided under Special Condition C20 and not repeated here.

Special Condition E11. Amendment to Credit Rating of the Licensee

Respondents' views

NGT

- 1.541 NGT did not comment on Special Condition E11 within its response.

Potential Purchasers

- 1.542 No potential purchasers commented on Special Condition E11 within their responses.

Shippers/suppliers

- 1.543 One shipper/supplier stated that the purpose / benefit of Special Condition E11 should be confirmed.

Ofgem's proposals

- 1.544 Ofgem stated, in the February document, that the purpose of this condition was to address the fact that the four legally separate entities within which the IDN licences will sit will not have their own credit ratings in the period between hive-down and share sale. In the February document, Ofgem stated that the Authority proposes to require "keep well" agreements from Transco to address this issue. This remains the intention.

Schedules

Respondents' views

NGT

- 1.545 NGT did not comment on the schedules within its response.

Potential Purchasers

- 1.546 No potential purchasers commented on the schedules within their responses.

Shippers/suppliers

- 1.547 One shipper/supplier stated that they did not consider that it was appropriate to introduce a schedule for flow flexibility at this stage as such arrangements will not be introduced on day 1 post DN sales. This respondent stated that this assumed the introduction of a particular form of “enduring” arrangements which would pre-judge the outcome of a possible future UNC modification proposal, and as such, need not apply to shippers at this stage.

Ofgem's proposals

- 1.548 With respect to the inclusion of a schedule in relation to flow flexibility, Ofgem would note that references to NTS exit flow flexibility and NTS exit capacity were introduced to make clear the Authority's decision with respect to “Option 2A” payment flows, and that, a schedule is included for completeness of the drafting. Furthermore, it is Ofgem's view that, should changes be necessary following the outcome of a future UNC modification proposal with regard to enduring arrangements, these could be performed at the same time as licence amendments that will be necessary to implement such enduring arrangements.